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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 547

WALTER H. GANT, KNOX L. GARVIN, AND A. D. HUDSPETH, APPELLANTS,

vs.

THE CITY OF OKLAHOMA CITY AND J. W. VAN METER, SUPERINTENDENT OF BUILDINGS

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED DECEMBER 10, 1932

(37,244)

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IN DISTRICT COURT OF OKLAHOMA COUNTY, STATE OF OKLAHOMA

No. 65300

WALTER H. GANT, KNOX L. GARVIN, and A. D. HUDSPETH, Plaintiffs,

vs.

THE CITY OF OKLAHOMA CITY, OKLAHOMA, a Municipal Corporation, and J. W. VAN METER, Defendants

Appeal from the District Court of Oklahoma County, State of Oklahoma

Hon. Sam. Hooker

Case-made—Filed Feb. 17, 1932; Filed in Supreme Court Feb. 18, 1932

[fol. 6] [Caption omitted]

[fol. 7] IN DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

PETITION—Filed Oct. 2, 1930

Come now the plaintiffs and for their cause of action against the defendants allege and state:

(1) That the plaintiffs, Walter H. Gant and Knox L. Garvin, are the owners of a valid oil and gas mining lease covering the following described property situate in Oklahoma County, Oklahoma, to-wit:

Block nine, Meads Addition to Oklahoma City, Oklahoma; that said lease was executed on or about the — day of —— 1930, by —— —— and —— —— as lessors to A. D. Hudspeth as lessee and subsequently assigned by the said A. D. Hudspeth to these plaintiffs. These plaintiffs allege that said lease, among other things, provided that said lessee, or his assigns, should commence the drilling of a well upon said

premises for oil and/or gas within a certain time; and that the time within which said well was to be commenced has expired. That according to the terms of said lease it was incumbent upon these plaintiffs, as the assignee of the [fol. 8] lessee, to commence the drilling of said well within the time provided by said lease.

(2) These plaintiffs allege that in order to carry out the terms of said lease relative to the drilling of said well they did, on or about the — day of ——, 1930, enter into a contract with one M. T. Smith, a drilling contractor, to go upon said premises and drill thereon a well for oil and/or gas. That pursuant to said contract the said Smith proceeded to move machinery and equipment upon said premises and commence the drilling of said well and that said well is being drilled at this time and has reached an approximate depth of 2700 feet.

(3) These plaintiffs allege and state that before entering upon said premises by their said contractor for the purpose of drilling said well they complied with all the valid ordinances of the defendant city regulating the exploration of said premises for oil and/or gas and that they likewise complied with all valid rules, regulations and ordinances of said defendant city requisite to the procuring of a permit from said defendants for the drilling of said well upon said premises for oil and/or gas and that the Board of Adjustment of the defendant entered its order granting to said plaintiffs a permit to drill said well and that said order granting said permit has become final and is now in full force and effect.

(4) These plaintiffs further allege and state that said defendants are threatening to interfere with these plaintiffs and their said contractor in the drilling of said well by [fol. 9] wrongfully requiring these plaintiffs to execute and file with said defendants a bond in the penal sum of Two Hundred Thousand Dollars, signed by some surety company authorized to transact business within the State of Oklahoma, payable to said defendant city, conditioned as provided by a certain ordinance of said city; that said requirement of said bond is based on an oppressive, unreasonable, unconstitutional and void ordinance.

(5) These plaintiffs allege that the property upon which they are drilling said well is far removed from residences,

homes or buildings and that said property has been used for a period of more than twenty years as a city dump ground. That there are now wells drilled or being drilled in close proximity to said property which, when completed as producers of oil and/or gas, will drain these plaintiffs' property of the oil and/or gas underlying the same.

(6) Plaintiffs allege that they acquired their interest in said oil and gas mining lease long prior to the time that said defendant attempted to adopt such oppressive, unreasonable and void ordinance.

(7) Plaintiffs allege that the demand of said defendants for such bond is unreasonable and unconstitutional and if enforced will have the effect of depriving these plaintiffs of valuable property rights without due process of law. Said demand of said defendants for said bond is unreasonable, oppressive and unconstitutional in that it places the plaintiffs at the mercy of surety companies authorized to transact business within the State of Oklahoma; that such [fol. 10] surety companies, before they will execute such a bond for these plaintiffs as surety, have made and will make certain demands of these plaintiffs which plaintiffs are unable to meet and that because of plaintiffs' inability and failure to meet such demands said companies have and will refuse to become surety upon such bond for these plaintiffs and that by reason thereof these plaintiffs are and will be unable to comply with the demands of said defendants under said ordinance. That said provision of said purported ordinance in its practical operation, if enforced, is discriminatory, discriminating between these plaintiffs and those persons, firms or corporations more fortunately situated financially who are able to comply with the requirements of said surety companies relative to the execution of said surety bonds.

(8) These plaintiffs allege and state that they have now offered to make and file with said defendant city a bond conditioned as required by said void ordinance with good and sufficient personal sureties thereon, and here and now tender such a bond in a sum that is reasonable adequate to protect said city and all persons in close proximity to said well, but that said defendant has wrongfully refused to permit these plaintiffs to file such a bond.

(9) These plaintiffs further allege and state that said defendants have threatened and are threatening to interfere with these plaintiffs and plaintiffs' contractor in the drilling of said well and are threatening to forcibly stop the drilling thereof. And that said defendants, their offi- [fol. 11] cers, agents, servants and employes, unless restrained by the interposition of the protective authority of this court, will refuse to allow plaintiff and plaintiffs' contractor to proceed with the drilling of said well to the irreparable damage and injury of plaintiffs for which plaintiffs have no adequate legal remedy.

Wherefore plaintiffs pray for a temporary restraining order restraining said defendants, their officers, agents, employes, and servants from interfering with the plaintiffs and plaintiffs' contractor in the drilling of said well, and that this matter be heard, upon notice, and thereupon a temporary injunction be granted enjoining said defendants, their officers, servants, agents, employes and appointees from interfering with plaintiffs and their contractor in the drilling of said well and that upon a final hearing said temporary injunction be made permanent, and for such other and further relief to which they may be justly entitled.

Twyford & Smith, Womack, Brown & Cund, Attorneys for Plaintiffs.

[fols. 12-14] *Duly sworn to by Knox L. Garvin. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 15] In District Court of Oklahoma County

[Title omitted]

Answer and Cross-petition—Filed Oct. 7, 1930

Come now the defendants, the City of Oklahoma City, Oklahoma, and J. W. Van Meter, and for answer to the petition of plaintiffs filed herein, states:

1. That said petition fails to state facts sufficient to constitute a cause of action in favor of plaintiff and against these defendants.

2. That the petition shows on its face that the plaintiffs made application to the city, and were granted a permit to drill a well on the property set out in the petition of plaintiffs, conditioned that the plaintiffs comply with the [fol. 16] ordinances and execute a bond as provided by the ordinances of the City of Oklahoma City, and especially section 21 of Ordinance No. 3944, being an amendment to chapter 22 of the General Ordinances of 1928, and commonly known as the drilling provision of the zoning ordinance, and that the plaintiffs sought the benefits of said ordinances in so far as they might operate in favor of plaintiffs, and now seek to destroy the provision which they do not desire to comply with, and by reason thereof, the plaintiffs, and each of them, are estopped to maintain this action.

3. That the plaintiffs show by their petition that they have no- exhausted the adequate remedy at law provided by chapter 178 session laws of 1923, and chapter 22, revised ordinances 1928 of said city, and therefore, they are not entitled to maintain this action.

4. The defendants deny generally and specifically, each, every and all the material allegations in said petition contained.

Cross-petition

Come now the defendants, the city of Oklahoma City, and J. W. Van Meter, as superintendent of buildings for said city, and for their cross action against the plaintiffs, allege and state:

1. That the plaintiffs, Garvin and Gant, is a partnership composed of Knox L. Garvin and Walter H. Gant, the said Knox L. Garvin being a resident of Stephens County, Oklahoma, and the said Walter H. Gant being a resident of [fol. 17] Carter County, Oklahoma; and the plaintiff A. D. Hudspeth is a resident of Oklahoma City, Oklahoma.

2. That the defendant, the City of Oklahoma City, Oklahoma, is a municipal corporation existing under and by virtue of the laws of the State of Oklahoma under a charter duly adopted and approved, as provided by law.

3. That prior to the — day of ——, 1930, the plaintiffs made application to the building commissioner of the City

of Oklahoma City for a permit to drill an oil or gas well on Block 9, Meads Addition to the City of Oklahoma City, which said application was denied and from which the said plaintiffs appeal to the board of adjustment of said city, pursuant to Chapter 22, Oklahoma City General ordinances of 1928, and amendments thereto. That said appeal was heard, and on the 15th day of September, 1930, the Board of Adjustment, aforesaid, made an order granting to the plaintiffs the right to obtain a permit for the drilling of one oil and/or gas well on Block 9, Meads Addition, aforesaid, and in addition thereto made certain other orders in connection with said property and the drilling of said well, and in addition thereto ordered that the plaintiffs comply with all ordinances and regulations of said city and all terms of all ordinances then in force or thereafter put in force in said city relating to the drilling, operation and maintenance of a well upon said property for which said permit was granted, a copy of said order is hereto attached and made a part hereof, and marked "Exhibit A".

[fol. 18] That after the granting of said order the plaintiffs went upon said property without obtaining a permit and without complying with the ordinances of the city, as hereinafter set out, and did commence the active drilling, and is now engaged in the active drilling of said well, and the defendant, the city of Oklahoma City, is informed and believes and, therefore, charges that the plaintiffs have drilled said well to a depth in excess of — feet and are about to penetrate the oil or gas bearing horizon or sand, without having obtained a permit and without having complied with said ordinances of said city in relation to the drilling, operation and maintenance of said well in this:

That the plaintiffs have failed to obtain a permit from the building superintendent pursuant to the order of the Board of Adjustment;

That the plaintiffs have failed and neglected to execute a bond in the amount of Two Hundred Thousand Dollars ($200,000.00) conditioned that the plaintiffs will pay and discharge any liability imposed by law for damages on account of injury to property, either private or public, or bodily injury, including death, received or suffered by any person or persons, firm or corporation resulting from the drilling, operation or maintenance of said well or structures incident thereto.

Wherefore these defendants pray that the Court restrain the plaintiffs, and each of them, their servants, agents and employes, from drilling or continuing the drilling of said [fols. 19-26] well upon said property until the plaintiffs have complied with the ordinances of said city and obtained a permit and executed a bond, as required by said ordinances, and that upon final hearing the temporary order be made permanent, and that these defendants have such other, further and additional relief to which it may be entitled in the enforcement of said ordinances.

M. W. McKenzie, Municipal Counselor, Attorney for Plaintiff.

Duly sworn to by Walter C. Dean. Jurat omitted in printing.

[fol. 27] In District Court of Oklahoma County, State of Oklahoma

No. 65300

Walter H. Gant, Knox L. Garvin, and A. D. Hudspeth, Plaintiffs,

vs.

The City of Oklahoma City, Oklahoma, a Municipal Corporation, and J. W. Van Meter, Defendants

Statement of Evidence

Be it remembered that the above styled and numbered cause came duly and regularly on for hearing and trial on the 12th day of February, 1932, pursuant to assignment heretofore duly made, before trial judge Sam Hooker.

[fol. 28] James Lemen, called as a witness in behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Twyford:

Q. State your name to the Court, please.
[fol. 29] A. James Lemen.

Mr. Hull: May I ask what particular case we are taking this evidence in?

Mr. Cund: In 65,300. I thought we were to take all of the evidence in all of the blocks at once.

Mr. Hull: I understood the stipulation and I think it probably would be better procedure to take the evidence in one case and then at the conclusion of that case we will let our stipulation apply that the evidence taken in that case might apply in the next case.

(Argument off the record.)

The Court: Most of the evidence would be applicable in all of the cases anyway, wouldn't it?

Mr. Hull: I think the evidence would be applicable to all of them except as to the physical surroundings in each location.

Mr. Twyford: That would be all of the difference.

The Court: They are close enough together that it might be applicable even then, aren't they?

Mr. Hull: It would be as to two of them, your Honor, yes.

(Argument off the record.)

The Court: It occurs to me that the evidence would be so interwoven that it would be hard to say how much of the evidence in the first case would be applicable to the second case, and so on.

Counsel for Defendants: This is an equity case, your [fol. 30] Honor, and we know the Court can take the evidence and weigh it and apply the evidence. Say, for instance, we take the first case, and after the evidence is all in, we know your Honors can take the evidence in Case 65,300 and apply the evidence to case No. 65,301 in so far as it might be applicable. If it was a jury cause, it would be different.

The Court: It is your idea, then, to try the first case first and not refer to the physical surroundings of the wells involved in the second case at all?

Counsel for Defendants: Not until we get to that particular case and then we can agree that so far as the testimony in this case is applicable, that the Court may consider it

in the other cases, and then show the physical surroundings.

(Argument off the record.)

The Court: If you try them separately you would have to put the same witnesses back on.

Counsel for Defendants: They are separate lawsuits, your Honor.

Mr. Twyford: It is the same plaintiff——

The Court (interrupting): It is hard for us to decide that. If the large part of the evidence is applicable to all of the cases, the large volume of it, I think it would be better to try them altogether. If it is going to be necessary to introduce a lot of evidence in each case, then they ought to be tried separately as far as they can be, the way I look at it. I don't know and I can't tell.

Mr. Twyford: Our stipulation already is that we intro- [fol. 31] duce the evidence in the first case and it will be considered applicable to the three cases and a separate judgment rendered in each case, that is already our stipulation. Now, if they want to change that——

The Court (interrupting): The stipulation can be interpreted either way.

Mr. Twyford: I thought we could introduce the evidence and the Court could decide which applies.

The Court: If most of the evidence is applicable to each case, we had better hear the evidence altogether then.

Mr. Twyford: That is right. That is our stipulation.

Attorney for Plaintiff: Now, we had better make your stipulation plain.

Atty. for Defendants: We will not make a stipulation. We will abide by the Court's ruling.

Atty. for Plaintiff: All right.

By Atty. for Plaintiff:

Q. State your name, please.

A. James Lemen.

Q. Where do you live, Mr. Lemen?

A. Oklahoma City.

Q. What is your business?

A. Engineer.

Q. How long have you been following that business in Oklahoma City?

A. Five years.

Q. Are you acquainted with the premises involved in this suit being described as block nine in Meades Addition to [fol. 32] Oklahoma City?

A. Yes, sir.

Q. Have you visited that property?

A. Yes, sir.

Q. Have you visited—how long have you known that particular district, of your own personal knowledge, and when did you first see it?

A. I have seen it before, I have been over the territory, but I took special notice of it two days ago, last Saturday.

Q. What did you do there last Saturday?

A. I went there in company with Mr. McDaniels and measured the distance from the well to various surrounding buildings.

Q. Did you make a plat of your survey?

A. Yes, sir.

Q. Is this the plat that you made?

A. Yes, sir.

Q. Now, just go ahead and tell the Court what you did there and what surrounds this particular location in the way of business, habitations, or things of any kind or character.

A. Well, the location of the well is approximately 100 yards, perhaps—not more than that—less than a half mile from the nearest business building, that is some stores which I noted.

The Court: What is that again? It is what?

A. The well is just off of Reno Street, 160 feet, as I measured it, from Reno, and west on Reno Street are some small stores, the nearest to my knowledge—they are ap- [fol. 33] proximately one-half mile from the location of this well. The nearest houses are perhaps a hundred yards closer than that. The nearest buildings which I found were railroad buildings somewhere in the neighborhood of 300 yards from the well site.

By Atty. for Plaintiff:

Q. Now, just in order that the Court might better understand, take the plat and point out on the plat there just where this location is to the court.

A. It has been marked out in pencil. Here is the location here. This is Reno Street.

By the Court:

Q. Where is the location of the well?
A. Right there, that lot there.

By Atty. for Plaintiff:

Q. What lot is that on? Can you tell me?
A. On Lot 9.
Q. And what block?
A. I don't see a block. It is Meades Addition. I don't believe there is a block in there.
Q. Which direction is this?
A. North.
Q. All right. North of there what do you find?
A. Find a railroad track.
Q. How far is that railroad track north of this location?
A. 750 feet is my measurements to the nearest track. There are several tracks in there.
Q. Are there any businesses along this railroad track here, or is it just simply——
A. (Interrupting.) I measured due north of the well 750 [fol. 34] feet to the track. Then up in an easterly direction up the track perhaps a hundred yards there is a water tank and a tall wooden building built onto the water tank—I think it is a water tank. It has the appearance of being a water tank.
Q. What do they use it for?
A. I didn't go near enough to see it. I think it is a storage building or perhaps an office building of some sort in connection with the railroad yards which are still further east on this track.
Q. Where are the city limits with reference to this well?
A. I understand this is the section line of the city limits.
Q. Then this country west of this location——
A. (Interrupting.) That is east.
Q. All right.
A. That is the south side of the city limits.
Q. Where is the Canadian River with reference to this well? About how far from the well is it? I want the record to show.
A. About a half mile.

Q. And what direction is the river from the well?

A. South.

Q. Now, what lies between the well and the Canadian River?

A. Waste land there which has been used for dump grounds and now has several wells located there.

Q. Is there any business or dwelling in between the well and the right south?

A. Nothing within sight of the road.

[fol. 35] Q. Where is the road?

A. Here, Reno.

Q. Describe it so that he can get it in the record. Do you mean on Reno Avenue?

A. Standing on Reno Avenue and looking south you can see no buildings out over that west area.

Q. What is it occupied by, that west area?

A. It has been used as a dump ground. There is much refuse laying there and there is several wells there.

Q. How many wells did you notice in that section?

A. I didn't count them. There is one across the road perhaps 150 feet south of Reno, and there are several others, I presume two or three hundred yards apart, several, three or four anyway.

Q. Now, take it west from the well, the location of the well, what did you find?

A. Coming about almost to this other section line which is Byers Avenue, extending about one block or perhaps two blocks east of Byers Avenue, which is one half mile from the city limits, or approximately one-half mile west from the location of this well, there is a little district in which there are some small residences extending about a block from Byers which is one-half mile from the well.

Q. Then west it is a half mile from the well to the nearest habitations?

A. Approximately.

Q. Approximately a half mile?

[fol. 36] A. Yes.

Q. Then what did you find southwest?

A. There is some residence district immediately south, the residence district which I just mentioned.

Q. What is in between the well and these resident houses a half mile west that you speak of?

A. Waste lands, dump grounds.

Q. What dump ground is it?
A. I understand it belongs to the city.
Q. Does that cover considerable acreage in there?
A. Yes, sir.
Q. And what do you find on that dump ground. What is there there?
A. Aside from refuse there is oil well drilling operations.
Q. That would be west?
A. Yes, sir.

The Court: And south?
A. Yes.

Q. South and west. Coming in this direction, northwest, what does this line represent here?
A. A railroad track.
Q. It is being used?
A. Yes.
Q. How far is that railroad track northwest from the location of this well?
A. This line represents a fraction of that railroad.
Q. How far is it from the well?
[fol. 37] A. This particular track is 750 feet from the well and this is in the neighborhood of a hundred feet farther.
Q. About 850 feet or 300 yards?
A. Yes.
Q. What is this?
A. Railroad track.
Q. And is that the city dump ground?
A. Yes, and also it has been used for hog pens.
Q. Now, when we cross the railroad coming northwest here and coming back north of the railroad, what do you find?
A. Some houses.
Q. What is this open space in here? What does that represent? Is that the city dump grounds, or do you know?
A. I don't know. I didn't observe that particularly.
Q. You didn't observe what was north of the railroad track?
A. No, but it is mostly waste ground. Some distance north of the railroad track there are some houses represented by this platted district here, I presume.

Q. You don't know there are houses there or not?

A. Yes, there are houses but I didn't estimate the distance.

Q. But, that is something like a half mile away?

A. Yes.

Q. This line here, what does that represent?

A. The river bed.

Q. What river bed—the Canadian River bed?

A. Yes, the Canadian River.

Q. Is it dry now?

[fol. 38] A. Yes, sir.

Q. Then, within a radius of a quarter of a mile of that well, you say there are no businesses and nobody living within a radius of that distance?

A. Yes, sir.

Q. I say, you say there are none?

A. Yes, sir.

Q. And then that takes in within that same radius of a quarter of a mile of that well—how many wells did you observe—oil wells already producing and drilling or already drilled and drilling within that same radius of a quarter of a mile of that well? Did you take any——

A. (Interrupting.) I didn't count them but I am sure there were at least four or five.

Q. Now, just east of this well I believe you state is the city limits?

A. Yes, sir.

Q. How far east of the well?

A. About 100 feet.

Q. Immediately on east there how near is the nearest well?

A. I took no special notice of the nearest well.

Q. Well, is it an off-set?

A. I presume it is 100 to 150 or maybe 200 feet east of the section line.

Q. That would throw the nearest well east, then? Something like 200 feet from the well, from the location that they are drilling which is involved in this suit?

[fol. 39] A. Yes.

Q. Is that a producing well or is it drilling or what?

A. I don't know anything about it.

Q. Now, southeast of that out in the country across the city limits, did you notice another well?

A. Yes, sir.

Q. How far was that from this location, about how far?

A. Oh, I presume that would be somewhere around in the neighborhood of perhaps three or four hundred yards.

Q. Is it producing, or do you know?

A. I don't know.

Q. You don't know about that?

A. No.

Q. Referring again to this plat so that I can—I may want to introduce that in evidence later—what is this point here?

A. It represents the well in question.

Q. And what is it east of the well, immediately east?

A. That is Reno.

Q. And immediately south?

A. The section line.

Q. And south of the section line is the open country?

A. You have your directions wrong. South is Reno and the east is the section line.

Q. This open country between the railroad track marked on your plat, and Reno Avenue marked on your plat, is that inhabited or not?

A. No.

[fol. 40] Q. How far is it from the well to the railroad tracks by your measurement on the plat?

A. 750 feet.

Q. And from the well to Reno Avenue?

A. 160 feet.

Q. And from the well west to Meade No. 1 you have it marked?

A. This is Meade No. 1 (indicating).

Q. Well, to this point here.

A. That is just the title to the sheet.

Mr. Twyford: We want to introduce this as Plaintiffs' Exhibit No. 1.

Atty. for Defendants: May I ask the witness a question in connection with this exhibit, your Honor?

The Court: Yes, you may.

By Atty. for Defendants:

Q. Is this drawn to scale?

A. Very closely, approximately, yes, sir.

Q. I didn't ask you that. I asked you if that was drawn to scale. You are an engineer and you know what that means.

A. I used a scale in drawing it, but I didn't use a great deal of care in placing my lines exactly.

Q. Then this is not an absolutely correct representation?

A. It is correct within, I would judge, five or ten per cent of the distances.

Q. But, you will please answer my question by saying what it is. It is not a correct representation, is it?

A. No drawing is absolutely correct. No one could guarantee that a drawing was absolutely correct.

[fols. 41 & 42] Q. I beg your pardon?

A. No engineer could guarantee his drawing was absolutely correct according to scale.

Q. Well, now, I didn't ask you to guarantee anything, Mr. Witness. I asked you if that was a correct representation?

A. Yes, sir, it is.

Q. And drawn to scale?

A. Yes, sir.

Q. What scale did you use?

A. That scale is one-half inch equals 100 feet.

Q. One-half inch equals 100 feet?

A. Yes, sir, on that particular sheet.

Atty. for Defendants: All right.

(Which instrument so offered and received in evidence and having been heretofore marked "Plaintiffs' Exhibit No. 1" for the purpose of identification, is attached hereto in the form of a photostat copy.)

[fol. 43] By Mr. Twyford:

Q. Now, I call your attention to the location that you say is right north. What is that called—straight west a half mile, I mean. I get my directions wrong.

The Court: You have another plat there, now.

Mr. R. H. Brown: Yes, sir, this is one of the locations.

By Mr. Twyford:

Q. What s-it is this in, this well?

Mr. Cund: East Grand Avenue.

By Mr. Twyford:

Q. What suit is it involved in? Do you know?

Mr. Twyford: The other one is 65,300. Do you know which one this is?

Mr. R. H. Brown: Do you mean the legal description of the property?

Mr. Twyford: Yes. I want to know which suit this is involved in.

Mr. R. H. Brown: 65,301. This is the Grand Avenue, the East Grand Avenue Addition.

Mr. Twyford: All right.

The Court: Let the reporter mark it and then we will know what you are talking about.

(The plat is thereupon marked by the reporter "Plaintiffs' Exhibit No. 2", for the purpose of identification.)

By Mr. Twyford:

Q. Now, I will ask you to tell the Court what that plat represents, Plaintiffs' Exhibit No. 2.

A. It represents a plat of the district in which another one of the wells which I measured is.

Q. Well, on this map does it show?

A. Yes, sir.

[fol. 44] Q. All right. Point it out to the court. Point out where that location is.

A. The triangular district between two railroad tracks and Byers Avenue and running along this line.

Q. How far is this location from the location of the well you have just testified about?

A. Very little less than one-half mile.

Q. What direction?

A. West.

Q. Now, the present location, the one you are testifying about now, what would you find north from that well? What is the condition of the country there? Is the country there inhabited or otherwise?

A. A railroad track immediately north and just across the railroad track there is a plant operated by the Western Paving Company, cementing and cement mixing and asphalt mixing.

Q. How far would that be north of this well?

A. I figured it here. It is 250 feet to the railroad track. The Western Paving Company is immediately adjoining the track right-of-way.

Q. It would be about 100 yards north of this plant?

A. Yes.

Q. To this Western Union plant you are talking about?

A. Western Paving Plant, yes, sir.

Q. Now, what would be south?

A. Reno Avenue is south and along Reno Avenue are several small houses.

[fol. 45] Q. How far is it south?

A. Reno Avenue to the center of the street——

Q. (Interrupting.) From this well, I am talking about, how far is it to Reno Avenue?

A. To the center of Reno Avenue 224 feet.

Q. Now, these houses you speak about——

A. (Interrupting.) Are you on both sides of Reno Avenue.

Q. Are they inhabited?

A. Yes, sir.

Q. Then, you take that same—then you go back to the location and go west and what do you find there?

A. Due west, Byers Avenue.

Q. How far away is it?

A. 590 feet.

Q. What is between the well and Byers Avenue is this district in here?

A. It is vacant.

Q. What is it occupied by, if anything?

A. There is nothing there at all. It is waste land.

Q. Vacant land?

A. Yes.

Q. Do you know whether or not the well is located on a lease that is on all of this property in here?

A. Yes, sir.

Q. You say it is?

A. That is my understanding.

Mr. Hull: Do you know?

[fols. 46 & 47] The Witness: No, sir.

Q. Now, out west what do you find west of the well?

A. You find a point where the two railroad tracks merge——

Q. (Interrupting.) Well, is it occupied or not occupied out west? Is that open country?

A. In this triangular portion between the point where the two railroad tracks merge it is vacant.

By the Court:

Q. Did you say west?

A. East.

By Atty. for Plaintiff:

Q. Now, get your directions right. What is it?

A. Yes, sir, east.

Q. Is that a true representation as near as you could make it of the situation out there around that location, that plat?

A. Yes, sir.

Mr. Twyford: We offer that plat in evidence, if the Court please.

Mr. Hull: Let me ask a question.

By Mr. Hull:

Q. That is drawn to scale as the other one?

A. It is not the same scale. That scale, one inch equals 100 feet.

Q. That would be half the scale. The other one is a half inch to a hundred feet?

A. Yes.

Mr. Hull: All right.

(Which instrument so offered and received in evidence and heretofore marked "Plaintiffs' Exhibit No. 2", for the purpose of identification, is attached hereto in the form of a photostat copy.)

[fol. 48] By the Court:

Q. Do those two plats show they are adjacent to each other or that they overlap?

A. They show no reference to each other.

By Mr. Twyford:

Q. They do, as a matter of fact, do they not?

A. Referring to this plat you can see they are near to each other. Those sketches there on separate sheets show no reference to each other, however.

Q. Now, are there any oil wells drilling or producing near this location?

A. There is an oil rig north and east.

Q. Can you refer to this one here shown on this plat?

A. I presume that is it (indicating).

Q. Do you know how close that is to the Western Paving plant?

A. It is east of the Western Paving plant and a little bit north.

Q. How far east is the Western Paving plant?

A. How far east of the Western Paving plant?

Q. Yes. You said it was a little east.

A. Oh, a hundred yards I expect; not more than that.

Q. Is it as near the paving plant or nearer than the location in question here?

A. I believe that it is nearer.

Q. Is it near the Western Paving—do you know whether or not it is on the property of the Western Paving Company?

A. I have heard it said several times.

Q. But, you don't know about that?

A. No.

[fol. 49] Q. Is there any well in close proximity to this location that you know of?

A. That was the nearest one.

Q. Are there any other wells down in here?

A. Yes, I believe there are some across Reno Avenue and south of Reno Avenue and somewhat east of the location there.

Q. You spoke of some resident houses being along here on Reno Avenue?

A. Yes, sir.

Q. Now, are there any wells drilling or producing in this vicinity down in here on Reno Avenue near these buildings you speak of?

A. In this district in here I believe there are some wells producing.

Q. How near would they be to these resident houses you are talking about?

A. I didn't measure those distances.

Q. From your observation would you say there are wells drilling or producing or both, as near to these dwelling houses in here as this location in question is to them?

A. Yes, sir.
Q. You would say there were?
A. Yes.
Q. Now, I direct your attention to this plat here and ask you to tell the court what that is.

The Court: Is that marked?
Mr. Twyford: No, but I will have it marked as soon as he [fol. 50] tells what it is.

A. A plat of one block in Eckroats Addition to Oklahoma City, in which there is a well being drilled.

Mr. Twyford: Mark it.

(The instrument is thereupon marked by the reporter "Plaintiffs' Exhibit No. 3," for the purpose of identification.)

Mr. Twyford: Now, this is involved in what suit?
Mr. Hull: 65,302.
The Court: This is located at a different place altogether, is it?
Mr. Twyford: Yes, sir.

By Mr. Twyford:

Q. Can you point out to the court on this plat where this would be located? Is this the location?
A. Yes, this is the location.
Q. Tell what it is.
A. Well, I looked at it on the plat at one time and it is the southeast quarter of section ten, township eleven, range three west, block fifteen, Eckroats Addition to Oklahoma City.
Q. Now, then, whereabouts on this plat is the well?
A. It is represented by that large dot there.
Q. Which is north and what direction is this?
A. North.
Q. Is that setting right now?
A. Yes, sir.
Q. What block is this, please, sir?
A. Block 15.
[fol. 51] Q. Now, are there any habitations in block 15?
A. Yes, sir.
Q. Where are they?

A. A row of houses along this side of the block, represented here.

Q. Are there any habitations on the north half of the block?

A. No, sir.

Q. What size is the block?

A. 300 feet by 375 feet.

Q. What street is along the north side of this block?

A. 21st Street South.

Q. And north of that in the next block north across the street what do you find there? Is it occupied or not?

A. No houses on that side of the street except at this corner of the block represented by that square.

Q. Now, how far would it be, then, from the location to the house represented by this square in the block north? About how far?

A. This scale here—I will scale it. About 250 feet.

Q. All right. Now, then, going west from that location—this is what direction here?

A. West.

Q. Going west from that location, where do you find the nearest house?

A. On the west side of Stiles Street.

Q. And how far would that be from the location?

A. About 300 feet to that one.

[fol. 52] Q. And the next one?

A. 325 feet.

Q. Now, going east from this location, how far is it from the location to the nearest house northeast?

A. From 225 feet to 250 feet.

Q. And southeast, how far would you say it is?

A. About 275 feet.

Q. Now, this row of houses that you indicate on the plat on the south side of the block, how far are they away from this location? About how far would that be?

A. The nearest house, 130 feet.

Q. That is the nearest house there is to the location?

A. Yes, sir.

Q. In that same block what does this indicate down here, 120 feet away, I believe?

A. A store building. I believe a grocery store.

Q. A grocery store. Now, are there any well- in this immediate vicinity being drilled at this time or producing? Did you observe that?

A. Not within two or three blocks.

Q. There are wells within two or three blocks?

A. I could see the rigs over the tops of the houses. I didn't take particular notice.

Q. Are those wells, you say, drilling as near to dwellings as these are here, this location?

A. I wasn't near enough to those wells to see.

Mr. Twyford: We offer this plat in evidence.

[fols. 53 & 54] By Mr. Hull:

Q. That is drawn to scale, is it?

A. One inch equals 100 feet, yes, sir.

Mr. Hull: That is all.

Mr. Twyford: You may take the witness.

(Which instrument so offered and received in evidence, having been heretofore marked by the reporter "Plaintiffs' Exhibit No. 3", for the purpose of identification, is attached hereto in the form of a photostat copy.)

[fol. 55] Mr. Hull: For the purpose of the record we move to strike all of the testimony of this witness relative to the location of the various residences around these three particular locations, from the record, for the reason that it is incompetent, irrelevant and immaterial and it doesn't tend to support any attack on the requirement of the bond in the ordinance at all.

The Court: Overruled.

Mr. Hull: Exception.

Cross-examination.

By Mr. Hull:

Q. Mr. Lemen, you say you made a survey of the property around these three locations, and you have testified as to the situation for distances running from a block to a half a mile. On this Meades Addition, block 9, the first well you testified about, how far is that from the City Hall, the City Hall being at the corner of Grand Avenue and Broad-

way. Approximately how far is that? I know you didn't measure it, but approximately how far is it from the City Hall?

A. I could calculate with a few moments thought, but I haven't ever given it that consideration before.

Q. It is about a mile, isn't it?

A. I presume it is all of a mile.

Q. Not much more than a mile. I am talking about an air line and not going around the section lines.

A. Yes, I presume it is all of a mile.

Q. About a mile. And, of course, between the City Hall and Reno Street it is built up solid and business houses and factories and wholesale houses of various kinds are there? [fol. 56] A. Yes, sir.

Q. And north of the City Hall for a distance of, say, more than a mile, that is probably the most valuable business property in the city?

A. Yes, sir.

Q. Now, west of this first well you speak of, for a distance of a mile and a half, say, what would you say as to the settlement in there?

A. West of the City Hall?

Q. West of the block 9 location. In other words you stopped at the half mile line here. What is there on west here down Reno Avenue coming in toward Broadway for several——

A. (Interrupting.) For a distance of a mile and a half?

Q. Yes, sir. That gets more thickly built up as you come in closer to Broadway, doesn't it?

A. Yes, sir.

Q. And there are a great many residences in there?

A. Yes, sir. For a mile, I would say, there are more warehouses and buildings of that character.

Q. Yes, sir, business places?

A. Yes, sir.

Q. Are those frame buildings or are they brick buildings?

A. Pretty fair share of both.

Q. Good share of both classes of buildings?

A. Yes, sir.

Q. Now, going south from that well for a distance of a mile, what is built up south of the Canadian River there? [fol. 57] Is that section through here built up?

A. I am not familiar with that.

Q. You are not familiar with that?

A. No.

Q. You couldn't testify as to that?

A. No.

Q. Now, going south you were limited as to the settlement between the location and the Canadian River?

A. Yes, sir.

Q. Now, you know northwest of this well in block 9 of Meades Addition, there is considerable natural draw there that the city has one of its stone sewers down, do you not?

A. Yes, sir.

Q. How far is that north of that location or northwest, that draw?

A. I suppose between a quarter and a half mile.

Q. You don't know, or do you know whether the wells that are drilling in that immediate neighborhood that are inside of the corporate limits and that have posted this bond—do you know whether they have posted this bond before they went to work or not?

A. I know nothing about that.

Q. Do you know who is drilling them?

A. The ones we have been talking about?

Q. No, the surrounding wells?

A. No.

Q. You don't know who is drilling them?

[fol. 58] A. No.

Q. On the location of the Reinhart and the Donovan tract, that is a half mile west?

A. Yes, sir.

Q. The same testimony you gave as to the improvements lying between that well for a mile north, that would bring it up to Grand Avenue and Broadway, a mile, would it?

A. I don't think it would be a mile.

Q. It would be less than a mile?

A. Yes, sir, considerably less.

Q. And the same testimony that you gave as to the improvements lying between the Meade well and Grand Avenue and Broadway, would, of course, be applicable to this well?

A. I could be more specific and say that I believe between Broadway and the Santa Fe tracks the buildings

have a fairly permanent character. East of the Santa Fe tracks the buildings are of a ramshackle nature, in general.

Q. It is a matter of common knowledge, of course, that those improvements lying between either of these wells and the City Hall, say, or for a half mile still farther north of the City Hall, are worth many hundreds of thousands of dollars?

A. Undoubtedly.

Q. Undoubtedly?

A. Yes.

Q. Now, going west of the Reinhart and Donovan wells for a distance of a mile or a mile and a half, what do you find there?

A. Find a built-up district, mostly a warehouse district, [fol. 59] industrial district for the first half mile, perhaps. That would take you about to Broadway.

Q. About to Broadway, and that would be about a half mile?

A. Yes, sir.

Q. And from Broadway on west it is still built up in a wholesale district and a great many frame residences in there?

A. Yes, sir.

Q. Now, on the Eckroat well, the well in block 15 of—well, the Eckroat well down here in block 15, that is in the middle of a built up residential district, is it not?

A. Yes, sir.

Q. For a distance of a mile in any direction except, possibly, that is a pretty solidly built up residential district?

A. Yes, sir. Not so solidly north, perhaps, as it is in other directions immediately surrounding it.

Q. And that is mostly the frame bungalow type of construction, is it?

A. Yes, sir.

Q. And people live in there?

A. Yes, sir.

Q. Do you know, of your own knowledge, or from any report, how much territory was covered with oil when the Sigmon well went wild?

A. The Sigmon well?

Q. Yes, sir, the Sigmon No. 1 I think it was.

A. No, sir.

Q. You know that it covered an area of approximately [fol. 60] two square miles of territory with oil?

A. No, sir.

Q. Do you know that the Mary Sudik well covered approximately that same area when it went wild?

A. I heard that.

Q. Approximately two square miles?

A. I heard various things.

Q. If the Mary Sudik had come in on block 9 Meads Addition and had gotten out of control, it would have covered all of this city with oil up to a mile north of the City Hall, is that not correct?

A. Are you speaking of the Eckroat well?

Q. I am speaking of the Mary Sudik well, if it were located on block 9, Meads Addition and covered two square miles with oil, it would be possible that it would have covered all of this city with oil for a distance from a half to a mile north of the City Hall on Grand and Broadway, would it not?

A. Not if it covered two square miles, I wouldn't say so.

Q. How far would it have come up if it had been located on block 9 of Meades?

A. Two square miles would be less than two miles square and I would judge it would be more than two miles from there to the City Hall.

Q. I am talking about block 9 Meades Addition which you say is about a mile from the City Hall, approximately?

A. Assuming on the Meades location that a well would spray oil over an area of approximately two square miles, [fol. 61] and if the well was located in the center of that area, I presume it would cover almost to the City Hall.

Q. Yes, sir, and would cover almost all of this downtown district anyway. Now, the Santa Fe depot, passenger station and freight station, lies generally between the City Hall and Block 9 of Meades Addition, does it not?

A. Yes, sir.

Q. And also the Rinhard and Donovan Well?

A. Yes, sir.

Q. And the station of the M-K-T and the Union Bus station is all down in that same territory, is it not?

A. Yes, sir.

Q. Do you know the direction of the prev-iling winds in this country?

A. South, from the south; also somewhat from the east.

Q. The prevailing winds are from the south and east?

A. Yes, sir.

Q. And both of these locations, the Reinhart and Donovan and Block 9 of Meades, are southeast of the main business portion of this city, and the Eckroat location is more or less directly south, is that correct?

A. Yes, sir.

Mr. Hull: I believe that is all.

Redirect examination.

By Mr. Twyford:

Q. Now, he asked you about this Mary Sudik Well. Do you know how many wells have been drilled in that vicinity that haven't given any trouble?

[fol. 62] Mr. Hull: That is objected to as incompetent, irrelevant and immaterial. It is the unexpected that happens and that we have to guard against. How many wells they have brought in safely doesn't cut any figure.

The Court: Overruled.

Mr. Hull: Exception.

By Mr. Twyford:

Q. How many wells out in that country have been brought in that nothing has happened, approximately, in your judgment?

A. I have heard of at least, I suppose, ten or twenty—between ten and twenty.

Q. Where is that that you have mentioned?

A. In the south Oklahoma City field. I know very little about the oil operations in the South Oklahoma City field except what I read.

Q. There is possibly in this district here immediately southeast of Oklahoma City and around these two wells that he is asking you about, there are two or three hundred wells down in there, are there not, or more than that?

Mr. Hull: We object to that. The witness says he doesn't know.

Mr. Twyford: I am talking about the particular locality.

The Court: Well, he says he doesn't know. Prove that by somebody else.

Mr. Twyford: All right. That is all.

Mr. Hull: That is all.

(Witness excused.)

[fol. 63] THOMAS C. VAUGHN, called as a witness in behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Cund:

Q. State your name, please, sir.

A. Thomas C. Vaughn.

Q. Where do you live, Mr. Vaughn?

A. Oklahoma City.

Q. What is your business?

A. Deputy conservation officer of the Corporation Commission of the State of Oklahoma.

Q. Are you familiar with the oil field in Oklahoma known as the Oklahoma City field?

A. Yes, sir.

Q. Do you know how many wells have been drilled in what is known as the Oklahoma City field, for oil and gas?

Mr. Hull: We object to that unless he confines his answer to the number of wells within the corporate limits. I don't think the number of wells outside that, which is known as the Oklahoma City field, is material.

The Court: Overruled.

Mr. Hull: Exception.

A. There have been 574 completions in the Oklahoma City pool proper.

Q. What does the Oklahoma City pool proper include, Mr. Vaughn? What territory does that cover?

A. Well, from section 35-11-3 west to the strip of country approximately six and a half miles north.

[fol. 64] Q. How many wells did you say had been completed in that district?

A. Five hundred and seventy-four to date.

Q. Do you know how many of that number have been drilled within the city limits of Oklahoma City?

A. There have been 21 completions, in the corporate limits?

Q. Twenty-one completions in the corporate limits?

A. Yes.

Q. And the remainder of the wells were in the outlying district surrounding Oklahoma City?

A. Yes, sir.

Q. Do you know how many of those completed wells that have been drilled, in the drilling thereof got beyond the control of the drillers and the contractors?

A. Twelve.

Q. Twelve?

A. Yes.

Q. The remaining number of completed wells have been drilled and completed without the wells getting beyond the control of the drillers and contractors?

A. Yes, sir.

Q. Are you familiar with the equipment and appliances that are used by drilling contractors in the drilling of oil and gas wells?

A. Yes, sir.

Q. Is there any equipment now in use generally in the Oklahoma City field that will prevent blow-outs and will [fol. 65] prevent wells from getting away?

Mr. Hull: We object to that as incompetent, irrelevant and immaterial. There is no allegation in the petition that there is no hazard of drilling wells, and, as a matter of fact, they tender a bond for protection against hazard.

The Court: Sustained.

Mr. Cund: Exception. That is all with this witness.

Cross-examination.

By Mr. Hull:

Q. Mr. Vaughn, among these twelve wells that you speak of as having gotten out of control was the Sigmon No. 1?

A. That was included in the twelve.

Q. And the Mary Sudik well?

A. Yes, sir.

Q. And what was the name of the gas well that caught afire and burned for some time?

A. There were two, the Stamper No. 3 and the Kinter No. 5.

Q. The Stamper No. 3 and the Kinter No. 5?

A. Yes, sir.

Q. Do you know, of your own knowledge, how the territory was sprayed with oil when the Mary Sudik was out of control?

A. I never measured it. On one particular day when the wind was from the north, the oil went quite a distance south.

Q. A matter of a couple of miles from the well, would you say, Mr. Vaughn?

A. Yes, sir, I should say so.

Q. And, on the Sigmon well when it was out of control, [fol. 66] during that time the wind shifted, did it not, and not only sprayed to the north or the northwest, but the wind shifted and it sprayed to the southwest, did it not?

A. Yes, sir.

Q. For a matter of even farther than the Mary Sudik had?

A. I couldn't say as to the distance, but quite a ways.

Q. You would say a matter of a mile or more, in your best judgment?

A. Yes, sir.

Mr. Hull: That is all, Mr. Vaughn.

Redirect examination.

By Mr. Cund:

Q. Do you know, Mr. Vaughn, since the completion of the Mary Sudik and the Sigmon wells, since they went wild, whether or not there has been any equipment perfected that would have prevented that if they had been used on those wells?

Mr. Hull: We object to that as incompetent, irrelevant and immaterial. That is the very reason we are attempting to require this bond, so that if there is such equipment the operator, in view of this bond being up to pay damages, will be more careful to use this equipment. It doesn't go to the validity of the bond at all.

Mr. Cund: I think it would be competent.

The Court: It is the same as the objection a while ago. Sustained.

Mr. Twyford: It wasn't on that theory, I don't believe, your Honor. They brought this Sigmon well in themselves out in the country and we want to show how it went wild. It is an explanation of that. These wells are only a hun-
[fol. 67] dred feet farther out. In explanation to their evidence I think it is competent to show what was wrong with those two wells.

(Argument off the record.)

The Court: Do you mean that new equipment invented since that time?

Mr. Twyford: And used, yes.

The Court: Mr. Witness, in your answer do you mean that they have invented new equipment?

Mr. Twyford: Discovered new equipment.

The Witness: I wouldn't say invented, but I would say they have perfected equipment since that time, yes, I would say they had.

The Court: Let him answer.

The Court: That doesn't protect against negligence on the part of the operator.

Mr. Cund: What was your answer?

The Witness: State that question again.

(The question is thereupon read by the reporter.)

A. Well, in the case of the Mary Sudik, at that time there were gates that would have held the well had they had them on, but they didn't have them on, and since that time I suppose that prompted the Commission to make the order to require the operators to have a gate on at the final setting of each string. The blow-out preventers were new, practically new at the beginning of the Oklahoma City pool, and they have been perfected from time to time and are very much more effective now than they were.

[fol. 68] By Mr. Cund:

Q. Would the use of a blow-out preventer now in a well drilled in that sand out there, prevent the well from getting away and getting out?

A. If it was in working order, yes, sir.

Q. Mr. Vaughn, do you know where Block 9 in Meads Addition to the City of Oklahoma City is located?

A. Not offhand, no, sir.

Mr. Twyford: Locate it by a different description.

By Mr. Cund:

Q. Here it is right here. (indicating on plat) Would you consider, from your experience, that the drilling of a well on Block 9 Meads Addition to Oklahoma City, Oklahoma, would be dangerous to the health, safety and public welfare?

Mr. Hull: We object to that as incompetent, irrelevant and immaterial and calling for a conclusion of the witness on a non-expert matter.

The Court: Sustained.

Mr. Cund: Exception.

Mr. Twyford: I believe the court——

The Court (interrupting): That is a general question.

Mr. Twyford: This man poses as an expert and he has observed the drilling of lots of wells in this field and he is a conservation officer, and I think it would be enlightening to the court for him to give his opinion.

The Court: The question takes in too much territory. You are asking about the public health and safety and so forth.

By Mr. Cund:

Q. Mr. Vaughn, do you consider the drilling of an oil [fol. 69] and gas well in block 9 Meads Addition to Oklahoma City, where modern equipment is used in the drilling of the well, do you consider that it would necessarily endanger the public or private properties surrounding it?

Mr. Hull: We object to that as incompetent, irrelevant and immaterial and it doesn't go to the validity of a requirement requiring a bond to protect against wells that are not properly operated.

The Court: Well, it goes to show the hazard. I suppose it has something to do with it. Objection overruled.

Mr. Hull: Exception.

A. I would think drilling a well up there would be more hazardous in this way: If some little thing would happen it would cause some damage, but with the proper equipment kept in proper order, there shouldn't be anything happen that they couldn't handle and the well shouldn't get away at all.

By Mr. Cund:

Q. Would your answer to that question be the same as applied to a well on block 15 Eckroat Addition, lots 3 and 4 in the East Grand Addition to Oklahoma City?

A. Yes, sir.

Mr. Cund: That is all.

Recross-examination.

By Mr. Hull:

Q. Mr. Vaughn, in your last answer you gave you meant to say that if they used all of the best known equipment, and every man connected with the operation of the well used all of his skill and wisdom, and if there was no negligence there at all, then, in your judgment, they could bring [fol. 70] a well in in this field without it getting away from them?

A. Certainly, yes, sir.

Q. But, so long as you have the human element to deal with and the negligence of employes which might occur, you can't say, as a matter of certainty, that none of them will ever get away, can you?

A. No.

Q. And you wouldn't attempt to say that, of course?

A. No.

By the Court:

Q. Let me ask this question: Is that very expensive equipment, this new equipment you speak of, or not?

A. Well, the—no, I wouldn't say that it is very expensive. There are different types. Probably some are as effective as others. There are three or four good types of blow-out preventers that cost from, well, $400.00 to $1,800.00 or $2,000.00, installed on a well. Most of the

operators are using the more expensive blow-out preventers.

The Court: Go ahead.

By Mr. Hull:

Q. Mr. Vaughn, continuing along the line of questioning just now, if a well got away in block 9 of Meads Addition, or block 15 of Eckroat's Addition, or the other location a half a mile west of block 9 Meads, because of its proximity to the business district of the city it necessarily would be a greater hazard and would create more injury than it would were it down at the extreme south end of what is spoken of as the Oklahoma City field, beyond the city limits, is that so?

[fol. 71] A. Naturally it would.

Mr. Hull: That is all.

Redirect examination.

By Mr. Cund:

Q. Are most of the operators and drillers in the Oklahoma City field, using the blow-out preventers when they bring wells in now?

A. That is compulsory.

Q. That is compulsory?

A. Yes, sir.

Mr. Cund: That is all.

Mr. Hull: That is all.

(Witness excused.)

Charles K. Scruggs, being called as a witness in behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Cund:

Q. State your name to the court, please, sir.

A. Charles K. Scruggs.

Q. Where do you live, Mr. Scruggs?

A. Oklahoma City.

Q. What is your business?

A. Insurance and bonds.

Q. What bonding companies do you represent in this state?

A. The Detroit Fidelity & Surety Company, and the Metropolitan Casualty Insurance Company.

Q. Are those bonding companies authorized to transact [fol. 72] business within the State of Oklahoma?

A. Yes, sir.

Q. Mr. Scruggs, are you familiar with the kind of a bond required by the city of people drilling oil and gas wells within the corporate limits of Oklahoma City, a $200,000.00 bond?

A. I know what kind of a bond it is. I have never read it through thoroughly. I have never read the ordinance thoroughly.

Q. Your two companies are authorized in the State of Oklahoma to execute such a bond if they care to execute it, are they not?

A. Yes, sir.

Q. Before a bond like that for an independent contractor or for an individual desiring to drill a well within the corporate limits of Oklahoma City for oil and gas mining purposes is issued, what, in the way of indemnity from the person applying for the bond to the company, would your company require?

Mr. Hull: Objected to as incompetent, irrelevant and immaterial, the matter of the reasonableness of the bond requirement not being a matter of judicial inquiry.

The Court: Overruled.

Mr. Hull: Exception.

The Witness: Read that question.

(The question is thereupon read by the reporter.)

A. Well, they would require either cash or collateral to the full amount of the bond, or they would require them to show a financial statement of such an extent that they could very easily take care of the $200,000.00 damages.

By Mr. Cund:

Q. They would either require first that the person ap-
[fol. 73] plying for the bond put up securities readily convertible into cash for the full amount of the bond——

A. (Interrupting.) Absolutely convertible into cash.

Q. Absolutely convertible into cash immediately?

A. Yes.

Q. Or they would require that individual to make a financial statement showing a net worth which, in the judgment of the company, would protect them in the execution of the bond?

A. Yes, sir.

Q. Now, then, approximately what would that financial statement have to show the net worth of the person applying for the bond to be?

Mr. Hull: The same objection, incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Hull: Exception.

A. Well, it would have to be, in my estimation, just from experience, it would have to show a net worth of over $1,000,000.00.

Q. A net worth of over a million dollars?

A. Yes, sir.

Mr. Hull: Now, we move to strike the answer of the witness for the reason that he is not shown to be qualified as a representative of his company in that capacity. He said from his experience and not from what his company would require.

The Court: Overruled.

Atty. for Defendant: Exception.

[fol. 74] By Mr. Cund:

Q. You do have authority to write bonds for the two companies you represent, do you not?

A. Yes, sir.

Q. What is the policy of the surety companies authorized to do business in this state, or what is the policy of your two surety companies authorized to write such bonds, relative to making bonds for individuals?

Mr. Hull: We object to that as incompetent, irrelevant and immaterial and not within the issues in the pleadings.
The Court: Overruled.
Mr. Hull: Exception.

A. Do you mean this kind of a bond?

By Mr. Cund:

Q. Yes, sir.
A. Well, almost all companies have the same requirements, all good companies, that is, have the same requirements. They are all practically the same. They require the same things on the same class of bond.
Q. Do the companies writing bonds, in the actual operation of the writing of the bond, make a difference between individuals applying for bonds and the major oil companies doing business in this state? Is that their policy to do that?

Mr. Hull: Same objection.
The Court: Overruled.
Mr. Hull: Exception.

A. Well, it all depends on the financial statement. If an individual can furnish a financial statement to justify the bond, they would write it for him, but if they can't they will [fol. 75] decline the bond.

By Mr. Cund:

Q. Is that customary with all of the surety companies authorized to do business in this state?
A. All that I have ever heard of, or know about, practically all of them.
Q. The surety companies writing such bonds as that in this state, reserve the absolute right themselves to say whether or not they will execute such a bond as surety, do they?
A. Yes, sir.

Mr. Hull: We object to that as incompetent, irrelevant and immaterial and the witness is not qualified to answer.
The Court: Overruled.
Mr. Hull: Exception.
Mr. Cund: That is all.

Cross-examination.

By Mr. Hull:

Q. Mr. Scruggs, it doesn't make any difference to your company whether it is an individual or an independent operator or whether it is what Mr. Cund speaks of as one of the major companies, but you require the same requirements from any of them, either a satisfactory financial statement or cash or collateral equivalent?

A. Yes, sir.

Q. Because a man is an individual operator or an individual, you don't make the requirement any harder than you do on anybody else?

A. No.

Q. It is the same?

[fol. 76] A. Yes.

Q. Do you pass on the sufficiency of the financial statements that are made for the ordinary applicants to your company for bonds?

A. Do you mean on all of them or this class of bonds?

Q. On this class of bonds.

A. I do not pass on them on this class of bonds, but I do on other bonds.

Q. That goes to your home office, I assume, and it is passed on there?

A. Yes, sir.

Q. Have your home offices promulgated any rules in that respect? Have they got a fixed, definite policy as to what would be a sufficient statement and what would not be?

A. I imagine they have.

Q. But, you don't know of them if they have?

A. I know that——

Q. (Interrupting.) You are not personally advised as to what those rules and regulations are?

A. I know the rules and regulations are such that, as I stated, they would have to either put up the collateral or have a financial statement to justify it.

Q. Yes, sir, but what your companies consider a sufficient financial statement, you don't know what that is based on and that is a matter that is handled entirely by your home office?

A. Yes, sir.

Mr. Hull: I think that is all.

[fol. 77] Redirect examination.

By Mr. Cund:

Q. I believe you stated to Mr. Hull that it didn't make any difference to your company whether they wrote a bond for an individual or one of the major operating companies. Do you know whether or not your companies have ever expressed to you, or have your companies ever expressed to you a decision that they would prefer not to write the bonds for individuals and that they would rather confine it to—or that they would rather not have individuals or that they would rather have individuals?

A. Yes, sir.

Mr. Hull: We object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Hull: Exception.

A. Yes, sir.

By Mr. Cund:

Q. Then, what is the policy of your companies in reference to that matter?

A. Well, I submitted one of these bonds about two weeks ago and had quite a good deal of correspondence about it, and I received a letter back from them stating——

Mr. Hull (interrupting): We object to his testifying as to the contents of any letter.

The Court: Sustained.

Mr. Cund: Exception. That is all.

(Witness excused.)

[fol. 78] A. D. Hudspeth, called as a witness in behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Twyford:

Q. State your name, please, sir.

A. A. D. Hudspeth.

Q. Do you live here in the city?
A. Yes, sir.
Q. Are you an oil operator?
A. Yes, sir.
Q. How long have you been in that business?
A. Since 1914.
Q. And you are one of the plaintiffs here?
A. Yes, sir.
Q. Are you familiar with this block 9 Mead's Addition location?
A. Yes, sir.
Q. Are there any producing wells offsetting that location on the southeast?
A. There is a producing location 610 feet southeast of the well.
Q. What is the name of that well?
A. Slick well.
Q. How big a well is that?
A. Reported on the first twenty-four hour gage—that is on the first hour gage and figured by twenty-four hours, it runs 86,000 barrels.
Q. About when was that brought in?
A. About three weeks ago.
Q. Did it make any trouble?
[fol. 79] A. No.
Q. How far is this Hurt well, known as the Skelly-Hurt well, how far and what direction is that from block 9, the block 9 location?
A. Approximately 800 feet south and 100 feet east.
Q. It is just outside the corporate limits too, is it?
A. It is just a hundred feet off of High Street.
Q. How big a well is that?
A. The last gauge we had on it, I think, was around 80,000 barrels a day, twenty-four hours.
Q. Were you there when it came in?
A. Yes, sir.
Q. Did it hurt anything?
A. No, sir.
Q. Now, the city dump ground or the dump that is supposed to be owned by the city, is directly south of the block 9 location and across Reno Avenue, is it?
A. Yes, sir.

Q. There are two or three locations on that?
A. Yes, sir.
Q. None of them in yet?
A. No.
Q. Now, you made the location on block 9. At the time you made it was it right in the dump itself?
A. Yes, sir.
Q. What did you have to move away or what did you do there and what was the condition of it at that time?

[fol. 80] Mr. Hull: We object to that as incompetent, irrelevant and immaterial. It doesn't make any difference what he had to clear off to start his location.
The Court: Overruled.
Mr. Hull: Exception.

A. I had one crew to go in there to remove the human refuse, and they quit me, and I hired another crew, and I hired three different crews there before I got that work done.
Q. In other words this well is right in the middle of the dump there and surrounded on four sides by it?
A. Yes, sir.
Q. And you had to remove the human excrement and run the hogs out?
A. Yes.
Q. Are you familiar with the modern equipment they are using now in this field such as they used on the Skelly well close to this well and the Slick well offsetting this well and other wells down there, bringing them in to prevent the well from getting away?
A. Yes, sir.
Q. You are a practical engineer, are you, from that standpoint, a mining engineer?
A. Yes, sir.
Q. In your opinion is there any hazard in bringing in a well in such a location as block 9 Mead's Addition and the Reinhart & Donovan well, East Grand Avenue Addition?
A. I wouldn't think so unless it would be negligence.
[fol. 81] Q. Unless it would be negligence. To use the modern, proper equipment——
A. (Interrupting.) Yes.

Q. Do you intend to do that on these wells, use moder- and proper equipment?
A. Yes, sir.

Mr. Hull: We object to that as incompetent, irrelevant and immaterial, what he intends to do.
The Court: Sustained.

By Mr. Twyford:

Q. Well, is it expensive, is it prohibitively expensive?
A. No, sir.
Q. Now, do you entertain the same opinion as to the block 15 Eckroat Addition?
A. Yes, sir.

Mr. Hull: What do you mean, the same opinion?
Mr. Twyford: As to whether or not there is any hazard or danger to the surrounding country there in bringing in the well if they had the modern equipment mentioned.
The Witness: Not if you follow the rules of the Corporation Commission.

By Mr. Twyford:

Q. That this other witness has testified about?
A. Yes.
Q. Are they doing that now and do you intend to do that?
A. Yes, sir.

Mr. Hull: We object to that as incompetent, irrelevant [fol. 82] and immaterial what his intention is.
The Court: Sustained.

By Mr. Twyford:

Q. Now, Mr. Lemen was asked about other wells around the Eckroat location that he didn't know about. Where are the wells, if you know, with reference to that location?

A. Well, the Holmes No. 5 is southeast about 600 feet, and wells are drilling northwest in the next block, the corner northwest, and east.

Q. Now, as a matter of fact, that well that is in the block northwest is right up against houses, isn't it?
A. Yes.

Q. Much nearer than the well of yours?

A. Yes, sir.

Q. How far is it from the Lindsay No. 5, that large well there, how far is the Eckroat location from that?

A. I never measured it, but that is on the north part of that sixty acres there of the Holmes tract, and I wouldn't think it is over six or seven hundred feet, across a couple of blocks. That 15 is in the southeast corner of the northwest corner of 10 in block — there is one block south of that that is in the extreme southeast corner of the northwest quarter.

Q. That shows on this large map here, doesn't it?

A. I think it would if that is a correct map.

Q. Well, that has been used here.

A. Yes, here it is right here (indicating).

Q. Now, I have my finger on the figure 10 which is the [fol. 83] center of section 10, and there is block 15 has a black lead pencil ring around it here.

A. This is the quarter section line here.

Q. Running east and west and——

A. (Interrupting.) Yes, here it is.

Q. In other words, there is a half block between our location, the one we are talking about, and the Lindsey well that came in, No. 5, south there in the corner.

A. Yes.

Q. Now, there is a Mabee well that came in too east there. Did they have any trouble with that?

A. No, they haven't had any trouble with that well.

Q. Now, the location you spoke of is nearer the houses and northwest of your location and indicated here as block 13, Eckroat Addition, and that is the location you referred to?

A. This is the Phillips well here.

Q. Right southwest about a block?

A. That is Phillips here.

Mr. Twyford: That is all.

Cross-examination.

By Mr. Hull:

Q. Mr. Hudspeth, with these modern appliances that you spoke of as now being used in this Oklahoma City field, did you ever know of those threads being cut out by the sand?

A. Yes, if they are foolish enough to leave them open long enough.

Q. The gas pressure forcing the sand up through there cuts the threads out, is that correct?

[fol. 84] A. If you leave them open long enough it will, yes.

Q. And if your operators or your operatives don't watch those, and if they are not careful about it, why, the first thing you know it will blow your control head off, won't it?

A. No, you have two gates on there, Judge——

Q. (Interrupting.) There is the judge; pardon me.

A. I beg your pardon. They have two gates on there and if they go cutting you can close one of them.

Q. You are assuming that one of them is in perfect order at all times?

A. That is the object of it.

Q. That is the object, of course, but it has happened that both of them have been out of order, hasn't it, and that the well has gotten out of control?

A. No, I don't know of any well that has gotten out of control where they had the two gates. They probably cut some, but they haven't——

Q. (Interrupting.) The only reason they haven't gotten out of control is because the employer has been careful in noticing that condition and remedying it before it did get out of control?

A. Not necessarily. It is owing to the gas pressure.

Q. And the gas pressure in this field is still a very uncertain quantity?

A. Some haven't got hardly any at all.

Q. And some have more than they know how to handle, that is true, isn't it, Mr. Hudspeth?

[fol. 85] A. No, I couldn't say that. I think the biggest gas that has been taken care of is right out here at the edge of town.

Mr. Hull: That is all.

Redirect examination.

By Mr. Twyford:

Q. As a matter of fact you helped bring in one right across from this Meads Addition where there is plenty of

gas and you had no trouble in shutting it off with the extra gate when it commenced to cut the threads on the first gate?

A. Yes.

Q. If they had had those modern appliances on the Mary Sudik and the Sigmon, what is your opinion, as an expert, as to whether they would have gotten away or not?

A. Well, I wouldn't think so, no.

Q. They didn't have them?

A. No.

Q. This Skelly well about 850 or 800 feet south of Meads Addition, that was a bigger well, wasn't it, than the Mary Sudik well?

A. I don't know what the Sudik well made. I never had a gauge on it. I never got a report——

Q. (Interrupting.) You said 80,000.

A. The Sudik?

Q. No, the Skelly.

A. Yes.

Q. That was taken care of easily?

A. Yes.

Q. And that was right there?

[fol. 86] A. Yes.

Mr. Twyford: That is all.

Recross-examination.

By Mr. Hull:

Q. When the British-American brought a well in about eighty feet or such a matter from the school house out there, they had to close the school down and it has been closed ever since, hasn't it, because of the threads cutting out, and they are now transferring all those pupils all over the north end of town?

A. I don't know why they closed the school, but the gas—during the time the well was open the gas was more or less dangerous. I don't think the well got away.

Q. The gas got away and they had to close the school on account of it, isn't that true?

A. When they had the well open the gas, of course, went into the school house and they closed it in and if they closed it properly—I don't know anything about that in particular.

Q. You don't know why the school is still closed down, then?

A. No.

Q. But, you know it is closed, don't you?

A. No.

Mr. Hull: That is all.

Redirect examination.

By Mr. Twyford:

Q. There are no school houses near these locations at all, are there, the Meads Addition or the Reinhart & Donovan?

A. No.

[fol. 87] Mr. Twyford: That is all.

(Witness excused.)

Knox L. Garvin, called as a witness in behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Twyford:

Q. Mr. Garvin, you are one of the plaintiffs and you have been s-orn?

A. Yes, sir.

Q. Do you know where these three locations are they are testifying about in this case?

A. Yes, sir.

Q. Now, this first location that you call block 9, what is the situation around there with reference to whether that surrounding territory, say within a radius of a quarter of a mile of that location, as to whether or not there are any residences or businesses carried on within that radius?

A. There are not.

Q. What is there within that radius?

A. There is a dump ground north, west, south and southwest, and immediately east and southeast there is the oil field.

Q. How long have you been engaged in the oil business?

A. Oh, twelve or fifteen years. How long has it been since 1914?

Q. Well, since that time you have been engaged in the oil game?

A. Yes.

Q. Have you ever had any experience in drilling any wells?

[fol. 88] A. Yes, sir.

Q. In other fields than Oklahoma City?

A. Yes, sir.

Q. Have you been in towns where they had oil wells within the corporate limits of the town near residences and businesses?

A. This is my first experience in that.

Q. You haven't been in towns where they had that?

A. No, sir.

Q. Were you ever in Burkburnett, Texas?

A. I was in Burkburnett but I wasn't operating there.

Q. I know that, but I mean have you been in towns where you have seen them drill wells within the business and residential districts?

A. Yes, I have been in Burk, yes.

Q. You know they do drill there and drill them all over that town, don't you?

A. Yes, sir.

Q. What I was going to ask you is this: From your observation and experience, have you ever seen in those [fol. 89] towns you have visited large oil and gas wells among the residence and business districts and have you ever seen any injury to property or business by those wells?

A. No, sir, except oil on buildings. I have seen oil wells that flowed on the buildings in Burkburnett. During the completion of the well the well would flow and they would leave it open and let it clean itself and it would get on the location immediately adjoining the building.

Q. That would be where the location would be property on the same lot with the residence house?

A. Yes, sir.

Q. Did those wells down there make gas?

A. Well, they were large wells. They were not as large as these Oklahoma City wells, but there were wells there that made as much as two thousand barrels per day.

Q. I see. There was considerable gas or enough gas to flow them. They flowed?

A. Yes.

Q. Mr. Garvin, you are familiar with the surroundings around this location in Block 9 down here, now, and have you seen them bring other wells in in Oklahoma City here?

A. Yes, sir.

Q. And with the way they bring them in here now?

A. Yes, sir.

Q. And what is your opinion about the hazard of bringing a well in located as this well is, to the surrounding property down there?

[fol. 90] A. There is no hazard in completing one of these wells, as the witnesses ahead of me have stated, where the proper equipment is used in completing them.

Q. What is the proper equipment? Just tell the court briefly?

A. The well shall be—on the casing of the wells they place two high pressure gate valves on the top of the well and they build what we call in the oil field, a Christmas tree, and it is a bunch of various connections leading away from the well to the pits and to the tanks, and this is all high pressure equipment, stuff that was not made at all prior to this Oklahoma City field. In the equipping of these wells with these va-ves there is two of them below the floor under the derrick, down below in the cellar, and then leading away from the well there is a release into the pit where you can always open a valve and relieve your pressure on your gates and open and close them. Away from this well back thirty to fifty feet there is a welded pipe with grips on it for employees to close these wells without having to get up close to them, and up to date there has never been any one of these well pressure valves or gates that has bursted or been spoiled in closing it. During the process of the drilling of this well in the upper sands, after your nine inch is set, they have what we speak of as a blow-out preventer. This sets in on top of your casing and around your drill pipe with a stuffing box which you set the weight of your pipe on this blow-out preventer, and it closes it entirely. The weight of your pipe is greater than your pressure from below and it immediately stops the blow-out from [fol. 91] your well, and there is a valve, then, that goes into the pit that you can connect your pump with, and you pump heavy mud back through into your well to kill any pressure from below.

I believe that answers your question.

Q. What about the mud trap?

A. The mud trap is similar to the gas separators that is used in a flowing well that you can connect a well that is close to buildings to in completion, and as your well comes in your mud goes through this trap and separates your gas from your mud and force it through the vats and thence into the air and your mud goes into the pit.

Q. Is that a recent invention or discovery?

A. I don't know *if* it being used until recent months herein the Oklahoma City field. I never heard of it until recently.

Q. You take your well a half mile from this location, the one called the Reinhart & Donovan. You are familiar with the surrounding situation there, are you not?

A. Yes, sir.

Q. Do you know where this cement plant is?

A. Yes, sir, it is immediately adjacent to our property to the north.

Q. Is there any well there on the cement property?

A. Yes, sir.

Q. Is that on the property of this same plant?

A. As I understand it it is on the Reinhart & Donovan property.

Q. I am talking about the Western Paving Company.

[fol. 92] A. Yes, Western Paving.

Q. Is there a well on their property or drilling there?

A. I understand it is on their property. I don't know, but the rumors in the field there is that it is on the Western Paving Company.

Q. Is that near their plant?

A. It is possibly two hundred feet.

Q. Is it as near the plant as this well you are drilling?

A. It is considerably nearer.

Q. Now, there has been some testimony here about there being some residence cottages on Reno Avenue. What direction would that be from this?

A. Southeast.

Q. Southeast of this?

A. Of this location across the railroad.

Q. Are there any wells near these cottages other than this location of yours?

A. The nearer cottages to our location are, I would say, approximately the same distance as the Phelps-Walnut Grove well immmediately southeast of us. These cottages lay about half way between the two locations.

Q. This Phelps well, is it producing or has it been brought in?

A. No, it is a drilling well.

Q. But, it is as near these cottages as your well is?

A. Approximately the same; not very much difference.

Q. Now, the other location, the Eckroat location, are you familiar with the situation there and the surroundings? [fol. 93] A. Yes, sir.

Q. You heard the engineer's description of the distance?

A. Yes, sir.

Q. And of the cottages that he described as around this location?

A. Yes, sir.

Q. In your opinion can that well be brought in there without any hazard there to that property surrounding or to persons living there?

A. Yes, sir.

Q. Are there wells in that vicinity as near to residences as this well is?

A. We are the only well I know of drilling in the Addition there that has a full block without residences. The half block that we are on has no residences and approximately all of the south half of the block north of us has no residences and to the east of us it is sparsely settled and to the west of us I believe the block is completely settled and the other locations, a good many of them have had to move houses to get room to drill.

Q. Where are these locations you speak of?

A. One particularly is the British-American location diagonally across, a diagonal offset northwest of us.

Q. Near this?

A. Yes, and there are two other wells in the northeast of the southwest of 10 that had to move buildings and move them away in order to drill their wells.

[fol. 94] Q. Have any of them been brought in?

A. Two have been completed. The British-American hasn't been completed unless it was completed today.

Q. The other two have been completed?

A. Yes, sir.

Q. How far are those two wells from this particular Eckroat location of yours? Give us the approximate number of feet if you can, Mr. Garvin.

A. Block 15 is the British-American and the Eckroat Addition is approximately—those blocks are about 400 feet, aren't they? It is about 600 feet. It is on the west end of the block.

Q. It is a diagonal offset you say?

A. Yes, northwest, and the other locations, I believe, are in blocks 10 and 11 in the Schillings Addition. Is that right?

Mr. Hull: I don't recall offhand. That is correct, I understand.

A. Ten and eleven Schillings Addition, and that would be about—it is a block and a half south of block 10, so that would be two and a half blocks south of block 11 and whatever the distance- of the block- are, that is it.

Q. Those wells have been drilled in and are now producing wells?

A. Yes, sir.

Q. And they have residence houses and other places of business up there?

A. They are right in the middle of thickly settled areas. [fol. 95] Q. Is there any injury to properties around them that you know of?

A. Not that I know of. They were brought in through mud traps and were not allowed to flow in the air, as I understand it. I wasn't present at the completion, but that is the way I understand they were completed.

Q. In reference to this bond, have you received any permit from the City?

A. No, sir.

Q. You applied for a permit?

A. Yes, sir.

Q. But never received it?

A. No, sir.

Q. Now, one of the conditions of this—in order to secure this permit, I understand they require a $200,000.00 bond, is that right?

A. Yes, sir.

Q. Now, have you made investigation about what you would have to do to secure a surety bond for two hundred thousand dollars?

A. Yes, sir.

Q. From that investigation just tell the court what you learned?

Mr. Hull: We object to that as incompetent, irrelevant and immaterial and it doesn't go to the question of the validity of this bond requirement.

The Court: Overruled.

Mr. Hull: Exception.

A. I learned that we would have to qualify to make this [fol. 96] bond with collateral in the amount of a quarter of a million dollars, $250,000.00 to make this bond.

Q. What would there be to that collateral?

A. It would be negotiable securities or cash.

Q. Would that be for each bond?

A. Yes, sir.

Q. Do you have to make a bond for each well you drill?

A. Yes, sir.

Q. Then on these three wells you would have to make three $200,000.00 bonds, as I understand it?

A. Yes, sir.

Q. And you would have to qualify for that much property in each instance?

A. Yes, sir.

Q. Or $750,000.00 in all?

A. Yes.

Q. Now, what is the nature of the collateral?

A. Well, it was—it would be negotiable securities or cash.

Q. Well, is it what we call liquid assets?

A. Yes, sir.

Q. What premium do they charge?

A. Ten per cent premium.

Q. Ten per cent on that?

A. Of the gross of the bond, $2,000.00 per bond.

Q. What would the premium be for twelve months?

A. Two thousand dollars.

Q. For each bond?

[fol. 97] A. Yes, sir.

Q. Now, did you tender a personal bond to the city?

A. I wanted to go into it on that basis and was told that they were unable—that they couldn't do that.

Q. They refused?

A. They refused to do it. I was ready to tender it and discussed it.

Q. For what sum?

A. The sum wasn't discussed. They said they couldn't go into it.

Q. The sum wasn't discussed?

A. No.

Q. Something was said about your having paid the fee, $1,000.00. Is that what they charge for each permit?

A. Yes, sir.

Q. Did you pay the fee?

A. He deposited a certified check on each application for a thousand dollars, yes, sir.

Q. You just deposited that?

A. Yes.

Q. It hasn't been paid?

A. I believe the city treasurer is keeping it in escrow. He receipted the building commissioner as having it.

Q. How did you deposit that?

A. With the application.

Q. Did you have any other condition to it? I mean, Mr. Gravin, was it or was it not under protest, or do you recall [fol. 98] about that?

A. I can't answer that.

Q. Were you able to make that bond?

A. No, sir.

Mr. Twyford: That is all.

Cross-examination.

By Mr. Hull:

Q. Did you ever present the matter to the City Council of your inability to make a surety bond, and ask them for authority to make a personal bond?

A. No, sir.

Q. How did you go about it and who did you talk to about it?

A. Mr. Kelly.

Q. The Secretary of the Planning Commission?

A. Yes, sir.

Q. And the Clerk of the Board of Adjustment?

A. Yes, and the Assistant Municipal Counselor.

Q. Well, I beg your pardon, sir, but he was not the Assistant Municipal Counselor.

Mr. Twyford: I didn't get that argument.

Mr. Hull: There is no argument to it at all. I merely stated that Mr. Kelly was not the assistant municipal counselor.

Atty. for Defendants:

Q. You testified a while ago that a well could be drilled in this territory without any hazard. That is assuming, of course, isn't it, that every person that has anything to do with the drilling of this well would perform his duties with- [fol. 99] out any negligence?

A. I made that statement by experience, that we have had experience in this field and that is why I made it.

Q. Well, you just answer my question. You assume that everybody will perform this duties without negligence?

A. I don't know whether they have or not.

Q. I say, in order to bring a well in and not have any difficulty, it would require that everybody would perform his part of the work. If one man was negligent in the operation of the bringing in of the well, it might create a hazard, might it not?

A. No, not one man wouldn't. If it was carelessly handled generally there is a hazard, but one man making a mistake would not make a hazard out of it.

Q. It would not?

A. No.

Q. Two men might?

A. If it is generally handled carelessly and the equipment you use isn't the proper equipment, yes. We have had an experience of some—not as Gant & Garvin, but in the field we have had experience in the completion of thirty-seven wells, and surely some of those fellows have made a mistake.

Q. In the Oklahoma City field?

A. Yes, sir.

Q. There is always a possibility, what I am getting at, for a well getting away and that a well might get away?

A. Under certain management, yes.

[fol. 100] Q. It could get away, couldn't it?

A. Not under our management.

Q. You don't think it could get away at all under your management?

A. No, sir, I do not.

Q. But still there is that element of risk, isn't there, there? There is always the human equasion, as Mr. Hull says, that enters into it, isn't there?

A. I don't understand your question.

Q. There is always the element of risk that a well might get away?

A. Certainly there is a risk in anything.

Q. Now, do you know how much territory is included in the drilling zone inside the city limits?

A. I would say there is approximately some nine to twelve hundred acres and possibly fifteen hundred acres.

Q. And now in that territory about how much of it is settled up with residences?

A. Possibly fifty per cent.

Q. And part of it is in small business, industries, and so forth?

A. Well, there is not very much business in the drilling zone. There has been considerable buildings built on east "G" Street and some business houses in Capitol Hill, filling stations and the like of that in the drilling zone.

Q. But once in a while in the various sections of the drilling zone there is a little community business, though, is there not?

[fol. 101] A. I am trying to follow your line of questioning in my mind. Very little.

Q. Down on G Street you know there is some business?

A. Oh, yes, that has been put in there in recent months. It come in between the drilling wells in recent months.

Q. Supply stores and filling stations and oil field cafes and such as that?

A. Yes.

Q. Are there any little grocery stores along there?

A. Oh, yes, they are all through there.

Q. There are some grocery stores that were on G Street before the Oklahoma City field was opened, aren't there?

A. I wasn't familiar with G Street prior to the opening of the field.

Q. You don't know much about that?

A. No.

Q. On farther west of where you are drilling and in the drilling area and south of the river, there are a good many residences?

A. Yes, up to the Schilling and Eckroat Additions there are some nice residences and nice residence districts.

Q. What is the construction mostly, brick or frame?

A. Oh, there is probably ten per cent brick and the balance frame.

Q. I believe you testified something about the sanitary sewer a while ago. Does it go through this property on which you are drilling?

A. I didn't testify to it.

[fol. 102] Q. Didn't you?

A. No.

Q. Well, I beg your pardon. Do you know where the main sanitary sewer of the city is located?

A. No, sir. I know that there is a sewer ditch between our two wells and the southeast quarter of 34 out here.

Q. Is it an open ditch?

A. It sounds like it. It is pretty loud along there.

Q. I mean by that does it pass through a concrete pipe or is it just an open——

Q. (Interrupting.) I think the concrete ends along around Reno there.

Q. That is probably the mouth, then, where it discharges?

A. I think it does. It is a ditch from there on to the river, I think.

Q. That is not a sanitary sewer, though, is it? It is a storm sewer, isn't it?

A. I don't know what it is. I just know there is a sewer comes through there.

Q. Now, there is a draw that goes through this property, is there not?

A. The old river bed, I think, goes through there.

Q. The old river bed?

A. Yes, I think so.

Q. Is there any other draw through the property besides the old river bed?

A. I am not sure it is the old river bed, but I believe it *is*.

[fol. 103] There is a drain down through there.

Q. Now, in the operation of your well is it possible for the oil or some of the salt water or some of the properties that you take from the well, to escape into this river bed?

A. There is always that probability.

Q. You have that there also.

A. To familiarize the court and you too how this is handled, I would like to explain that, if it is in order.

Q. Certainly, I want you to let the court know all there is about it.

A. The way those things are handled, when the well begins to make salt water they build what they call a B. S. pit on the lease and pump this salt water and waste oil in, and if it is in excessive amounts to where the sand won't take it up, it is pumped into a pipe line and removed from the field. Now, then, the chance for that to happen, the question you asked, would be this: If this pit would get full or practically full and then there would come a big, dashing rain which would break it, if that happened it would go away diluted so that it wouldn't do a great amount of damage, if any.

Q. Then, under that kind of a condition you might have salt water and what B. S. or oil mixture there was, go down the draw of the river bed, if it be such?

A. And get mixed up with the sewer, yes.

Q. You are familiar with this ordinance of the city, are you not?

A. Well, as much as a layman could get.

[fol. 104] Q. You are familiar with this section 24 which makes it an offense to turn that class of stuff into the streams or into any of the draws within the city limits, are you not?

A. I didn't know that they had that kind of an ordinance.

Q. You didn't know that?

A. No.

Q. If it is in there that is one element that would enter into your bond, isn't it?

Mr. Twyford: Now, we object to that, if the court please.

The Court: Sustained.

Atty. for Defendant: Exception.

By Atty. for Defendant:

Q. Now, you testified with regard to the execution of the bond. Do you know how many operators in the field have brought in wells and have failed to make bonds?

A. I don't suppose there are any. I don't know of anyone in the city limits that has completed a well without a bond.

Q. All this- inside the city limits, so far as you know, that have brought in a well, all of them have executed bonds?

A. I haven't asked a one whether they have or not, but I assume by the requirements made of us, that the others have completed their wells with bonds made.

Q. You know, as a matter of common knowledge, that they all have, don't you?

A. Well, I assume so.

Q. And in your instance you think the main difficulty is because you are not able to qualify with a surety company [fol. 105] that would write the bond, that that is why it operates to your detriment, don't you?

A. Yes, sir.

Q. That is your whole lawsuit?

A. We got as far as we could go with meeting the requirements of the city.

Q. Now, you have made an application to the Building Commissioner for a permit to drill on these three tracks, have you not?

A. Yes, sir.

Q. Did he grant you a permit in either instance?

A. No, sir.

Q. Did he turn down your application?

A. Yes, sir.

Q. Then what became of your proceedings?

A. The one application he didn't turn down, the Reinhart & Donovan, but on the other two he did.

Q. On the Reinhart & Donovan he granted you the right to drill on the condition that you execute the bond and pay the fee?

A. Yes, sir.

Q. And you haven't done either one?

A. We paid the fee.

Q. You deposited the money but you haven't executed the bond?

A. No, sir.

Q. In the other two cases, what became of them?

A. They were up to the Board of Adjustment and we had a hearing and they ruled on it and ordered to- Building [fol. 106] Commissioner to make the permit.

Q. To grant you a permit?

A. I believe that is the way it is handled.

Q. You got an order from that Board to grant you the permit?

A. It hasn't been delivered back to him, or wasn't a week ago when I was down there, but I understand it has been since.

Q. But, you were advised that the Board of Adjustment had granted you the right to drill?

A. Yes, sir.

Q. And, among the conditions was the condition that you execute a bond?

A. That is one of the requirements of the building commissioner. They don't have anything to do with the bond.

Q. But, in the order your right to drill was conditioned by the Board of Adjustment, was it not, that you comply with the ordinance on that condition and especially that you execute the bond and pay the fee?

A. I don't think it required us to make bond; I wouldn't be positive and I can't answer that positively.

Q. Did you read the order?

A. No, sir.

Q. You haven't read it?

A. No, sir.

Atty. for Defendant: That is all.

Mr. Twyford: That is all.

(Witness excused.)

[fol. 107] Walter H Gant, called as a witness in behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Twyford:

Q. Mr. Gant, you are one of the plaintiff- in this case?

A. Yes, sir.

Q. You live in Oklahoma City?

A. Yes, sir.

Q. Are you familiar with this oil field?

A. Yes, sir.

Q. What is your business, Mr. Gant?

A. In the oil business.

Q. How long have you been in that business?

A. Since 1914.

Q. Have you had experience in other fields before coming to the Oklahoma City field?

A. Yes, sir.

Q. Mr. Gant, how many wells have you assisted in drilling in Oklahoma City since this field opened?

A. About thirty-nine since the field opened?

A. Thirty-nine wells?

A. Yes, sir.

Q. And where was the locality?

A. Well, I was vice-president of the Wirt Franklin Petroleum Corporation, and on the executive board until the 1st day of June, and we drilled ten wells on the Lowry and we drilled on the Minnie Page and on the Wright, and all [fol. 108] told we drilled about thirty-seven wells, and then I was vice-president of the Arolo and we drilled in section 11, and had a 200,000,000 feet gasser in section 11, making 5,000 barrels of oil and I was interested in the Smith-Wright well, and then Mr. Garvin—we together brought in a well, 154,000,000 feet two weeks ago just below the townsite in section 2.

Q. Mr. Gant, are you familiar with the three locations involved in these three cases?

A. Yes, sir, fairly well.

Q. You know where this block 9 is, this first well we have asked about?

A. Yes, sir.

Q. You know what the situation down there is?

A. Yes, sir.

Q. And as to the surrounding territory?

A. Yes, sir.

Q. Now, from your experience in the oil business and in the drilling of these wells here in Oklahoma City, in your opinion is there any hazard in the drilling in of this well in block 9 to the surrounding property or around that within a radius of a quarter of a mile?

A. No, no more than drilling any other well.

Q. What would you say as to the location west of there a half mile?

A. The same condition would apply.

Q. Do you know where the Eckroat well is here?

A. Yes, sir.

[fol. 109] Q. Do you know where the locations of the other wells are around it there?

A. Well, I wouldn't—not so well, not to designate the individual wells, no.

Q. Do you know where that British-American well is they talk about?

A. I know just about where it is, yes.

Q. That is a diagonal off-set from the location you are drilling there, I believe?

A. Yes.

Q. Well, what would you say with reference to the situation around the British-American as compared with yours?

A. We are in better condition to bring a well in that they were because they had to move houses to get their location, and we did not.

Q. Do you think there is any hazard to surrounding homes and houses there in bringing a well in in your Eckroat location?

A. No. I think through a sand pit we will never have to let that well flow to the open to flow it. We will open that well up through a sand pit and separate the mud and oil there.

Q. Now, Mr. Gant, you are familiar with the latest equipment and machinery and so forth that is used to bring these wells, are you not?

A. Yes, sir.

Q. You heard Mr. Garvin's testimony along that line?

A. Yes, sir.

Q. Do you think that those wells can be brought in in the [fol. 110] manner that he described?

A. Well, we will have a gas blow-out protector on each well. All of the wells we have drilled since the Mary Sudik well blew out, we have had gas blow-out protectors, that is the Wirt Franklin Corporation and the Arolo, and the well Mr. Hudspeth, Mr. Garvin and I finished two weeks ago.

Q. Have you ever had any trouble in the wells you have drilled?

A. No, sir.

Q. None of them got away from you?

A. No, sir.

Q. And none of them did any damage?

A. No, sir, we have had no damage. We haven't had a lawsuit in the Oklahoma City field of any kind.

Q. Now, Mr. Gant, do you carry compensation insurance?

A. Yes, sir.

Mr. Hull: We object to that as incompetent, irrelevant and immaterial.

Mr. Twyford: I hardly think it is. He is required by law to carry that and they are making that one of the conditions in this bond.

Mr. Hull: No, we are not.

Mr. Twyford: We will get to that.

The Court: Overruled.

Mr. Hull: Exception.

A. Yes, sir, we do, and public liability.

Q. Is there a regulation of the Corporation Commission covering the impounding of oil and salt water on leases in the State of Oklahoma?

[fol. 111] Mr. Hull: We object to that as incompetent, irrelevant and immaterial and not the best evidence.

The Court: Sustained.

Mr. Twyford: I didn't ask him what it was. I asked him if there was one. I think that is perfectly competent because he asked about if that would be in the Commission's bond and that comes along the line we expect to present to this court at the end of this testimony.

The Court: The fact that there is a regulation would not keep them from violating it.

Mr. Twyford: No, but it shows that they are tying into the same field of activity that the Corporation Commission and the law of this state have gone into. I think the court should permit the question and then you can rule it out later, if you wish, as I haven't the time to present the authorities to you at this time. You see, we have a statute on that which I could present to the court.

The Court: Sustained.

Mr. Twyford: Exception.

By Mr. Twyford:

Q. Now, you have applied for a permit to drill these wells to the city?

A. Yes, sir, and paid our $1,000 in under protest in each case for the permit.

Q. Now, have you complied with the ordinance in so far as you have gone with the exception of making this bond?

A. Yes, so far as it has been possible on our part. The [fol. 112] city might ask that we let certain royalty owners join in on a well which leaves it up to the royalty owners and not up to us, so we have complied up to the bond so far as we could.

Q. At this time, if I understand, the city is ready to issue the permit save and except the requirement, and that they insist that you meet it, of filing this bond of a surety company for $200,000?

A. Yes, that has developed the last while, yes, sir.

Q. You heard Mr. Garvin's testimony along that line, did you not?

A. Yes, sir.

Q. Have you made investigations yourself as to other people?

A. As to other people?

Q. Yes.

A. No.

Q. No, I don't mean as to other people, but have you made any investigations yourself as to the policy of the bond companies in making this particular class of bond?

A. No, I have not.

Q. You don't know about that?

A. No.

Q. Mr. Gant, have you been in different cities in Texas—I know of several down there—that have oil wells right in amongst the homes and the businesses, and have you visited those cities, such as Breckenridge and Ranger and Burkburnett?

Mr. Hull: We object to that as incompetent, irrelevant and immaterial what they do in Texas.

[fol. 113] The Court: Sustained.

A. Yes, sir, I have——

Mr. Hull (interrupting): Wait a minute.

Mr. Twyford: Yes, the objection was sustained.

By Mr. Twyford:

Q. Are there any here in Oklahoma that you recall now where oil wells have been drilled within the corporate limits of any of the towns of this state.

Mr. Hull: We object to that unless he precedes his answer or qualifies his question to similar fields to the Oklahoma City field.

Mr. Twyford: That is a matter of cross examination, I submit to the court.

Mr. Hull: Otherwise, it is incompetent, irrelevant and immaterial.

The Court: Sustained. This field may be very different from other fields.

Mr. Twyford: That is true, but I think that is a matter of cross examination. I think gas is a hazard wherever it would be if it gets away, and it makes no difference whether it is twenty million or a hundred. It would blow you up just the same, and there is no doubt about that, unless it is taken care of.

By Mr. Twyford:

Q. Have you been in fields in Oklahoma where the wells were making gas?

A. Yes, sir.

Q. And those wells were within the corporate limits of the city?

[fol. 114] Mr. Hull: The same objection we urged to the previous question. It is wholly immaterial unless a similar situation exists.

The Court: Do you mean high gas pressure?

A. Well, Judge, this is the deepest production in the state and naturally the highest pressure. Gas pressure runs about 14 feet per hundred pounds—14 pounds per hundred feet, so if you are drilling a 3,000 foot gas well in, the maximum gas pressure should be about 1200 pounds, and if you are drilling a 6,000 foot well, the maximum gas pressure should be about 2,400 pounds. Now, we overcome that by the character of material we use. We may use 12 pounds, 6⅝ in a 1,200 foot well, and out here we would probably use

30 pounds in the same. We have an excess reserve in all of our material in all fields as against pressure, and these wells do run up to 2,400 pounds. As to the volume, the depth has nothing to do with volume. I have had seventy million foot gassers at 2,000 feet, and I have ten million foot gassers at 2,000 feet, and out here you may have a well with little gas, and they do out here, and we had one with 154,000,000 feet. So, pressure is dependent upon depth, but volume is not.

Mr. Twyford: That is the point I had in mind, the volume, if the court please, but I don't understand that it makes any difference. That is all.

Cross-examination.

By Mr. Hull:

Q. Mr. Gant, you say you brought in thirty-nine wells in [fol. 115] this field without any of them getting away?

A. Yes, sir.

Q. There have been other operators whose wells did get away in this field?

A. Not since they put the gas protectors in.

Q. There have been other operators in the field whose wells did get away and your own witness testified to twelve of them?

A. Yes, sir.

Q. And those wells that did get away, whether they were due to negligence or due to inadequate *de*quipment or due to a lack of knowledge as to the character of equipment to be used, it is nevertheless a fact that they did get away and did do a large amount of damage?

A. No one was hurt in any of the wells that got away in this field.

Q. Do you know that in this court there are damage suits filed against the Mary Sudik well aggregating more than $300,000 for damage caused by that well getting away?

A. No, I do not know that.

Q. You wouldn't undertake to say that if the Mary Sudik well had been located in the heart of this city and had gotten away like it did, that there wouldn't be any damage?

A. No, I wouldn't say that at all.

Q. And you wouldn't think that?
A. No.
Q. I wouldn't think you would, sir. I believe that is all.

Mr. Twyford: That is all.

(Witness excused.)

[fol. 116] Otto Bradford, called as a witness in behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Twyford:

Q. Where do you live, Mr. Bradford?
A. Oklahoma City.
Q. What business do you follow here, Mr. Bradford?
A. I am the field umpire of the Oklahoma City pool.
Q. What do you mean by field umpire?
A. I have the supervision of the drilling, opening and shutting in of these wells.
Q. How long have you had that place?
A. Ever since they started.
Q. You are very familiar, I take it, with the field?
A. Yes, sir.
Q. You have seen a great many of these wells brought in?
A. Yes, sir.
Q. Do you know where these three locations are that are involved in this lawsuit?
A. About, yes, sir.
Q. Do you know especially where the location down in block 9 is?
A. Yes, sir.
Q. Do you know the situation surrounding that?
A. Yes, sir.
Q. You have heard the testimony about it?
A. Yes, sir.
[fol. 117] Q. Well, from what you know about it yourself and from what the testimony shows it to be, and from your experience here in the Oklahoma City field, would you say

there would be any hazard in drilling in that oil well out there?

A. Very little.

Mr. Hull: We object to that as incompetent, irrelevant and immaterial and the witness hasn't qualified himself at all.

The Court: Overruled.

Mr. Hull: Exception.

A. Very little if any.

By Mr. Twyford:

Q. What would you say as to the location west of there—I forget the name of it—the Reinhart location?

A. About the same thing.

Mr. Hull: The same objection.

The Court: Overruled.

Mr. Hull: Exception.

By Mr. Twyford:

Q. You have heard the description of the situation and circumstances surrounding that well here, have you not, by the other witnesses?

A. Yes, sir.

Q. And you know personally abo-t it yourself?

A. Yes, sir.

Q. And as to this Eckroat location, what would you say about that?

Mr. Hull: Same objection.

The Court: Overruled.

Mr. Hull: Exception.

[fol. 118] A. I would make the same answer.

By Mr. Twyford:

Q. Now, there has been some testimony here about some wells getting loose and beyond control. Has there, since the Mary Sudik well came in and this recent or modern equipment, we will call it, has been discovered and perfected, has there been anything of that nature happen in the field?

A. No, sir.

Q. What will you tell the court, then, has been your experience and observation in regard to wells getting beyond control for the last three to six months—I don't know what time, but since that occurred?

Mr. Hull: I beg pardon. I didn't get your question.

By Mr. Twyford:

Q. Well, for the past three to six months since that occurred?

A. There have been two of those wells, I think, that have happened in the last six months. I don't think of but two of those wells and that is all there has been.

Mr. Hull: That did what?

The Witness: Went wild.

By Mr. Twyford:

Q. Got out from under control?

A. Yes.

Mr. Twyford: I believe you may take the witness.

Cross-examination.

By Mr. Hull:

Q. Mr. Bradford, are you a practical operator?

A. I have been around it since 1913.

Q. What have you been doing in connection with oil? [fol. 119] Selling leases and buying leases or what?

A. I have bought and sold leases and been in the pipe line and refining business and also in field operation.

Q. In the actual operation?

A. I never drilled any myself, but I have been around drilling properties.

Q. Yes. So, you are not a practical operator?

A. No, I am not a driller, no, sir.

Q. Mr. Bradford, what did they close this school out here for the other day when that British-American well came in?

A. They claimed they closed it on account of gas.

Q. Because the well got away from them?

A. No, sir, that well didn't get away from them.

Q. They have kept that school closed for two weeks, haven't they?

A. The school is still closed and I don't think the well has been opened for that length of time.

Q. What was the reason they gave for closing the school?

A. They seemed to be afraid that that gas would be dangerous to the children in there, but the school is still closed and the well is also closed.

Q. Isn't it true that, generally speaking, when a well is opened and gas is permitted to escape, that it settles in the low places or that a certain percentage of it does?

A. To some extent, yes, sir.

Q. And it is apt to settle there for sometime before it is dissipated?

A. It doesn't stay very long after they close the well in. [fol. 120] Q. Well, what do you mean by very long?

A. Oh, probably six or eight hours or something like that, and by that time it is gone. I never have saw it hand any longer than that after a well is closed.

Q. Is that an inflammable gas?

A. No, sir. I dare say you could strike a match at the school house and you couldn't ignite it.

Q. What effect would it have on a human, on people?

A. It might be a little bit offensive, but it wouldn't hurt them. We work around it all of the time.

Q. Now in closed places. You work around it in the open air?

A. I have worked around it in closed places.

Q. Can you work in a room that is filled with that gas and that is closed?

A. Yes, sir, generally in these pump stations you will find ninety per cent of them filled with gas.

Q. And they are closed up so that there is no ventilation through there at all?

A. No, there are windows and doors like in any other building.

Q. You know there have been wells that have gotten away in this field?

A. Yes, sir.

Q. I believe you say since the Mark Sudik there haven't been any wells that have gotten loose but two?

A. No, I didn't say that. He said in the last three to six months.

Q. That was his last question. I understood his first [fol. 121] question to be since the Mary Sudik.

A. If that was the question I made a mistake. I thought he said in the last three to six months.

Q. The Sigmon No. 1 was after the Mary Sudik?

A. The Sigmon was after the Mary Sudik and Vincent 6 was after the Mary Sudik.

Q. Was the Stamper well——

A. (Interrupting.) That was way before it.

Q. So was the Kinter 5?

A. The Kinter 5 was before and Precure was sometime after the Mary Sudik.

Q. And wasn't there a well very recently that caught a fire, a gas well?

A. No. I don't know of but two fires. We haven't had but two fires. We have only had two fires in the field and that was the Stamper 3 and the Kinter 5. The other wells have gotten loose, some oil and some gas, but no other fires.

Q. Mr. Bradford, your statement that these wells could be brought in without any hazard or, I believe as you expressed it, brought in with very little hazard, you are basing that on the assumption that there will be no negligence in the operation of that outfit?

A. Well, there still could be some——

Q. (Interrupting.) I am not asking you that, but are you basing it on the assumption that there will be no negligence ?

A. No, I say there could be some negligence and still be no hazard.

[fol. 122] Q. The threads on the control valves could be worn out and there would still be no hazard?

A. If threads were worn out there would be a hazard, but nobody will put one on with threads worn out.

Q. You can't tell that won't be done when you have got the common element or the human frailty operating?

A. You can tell if the threads are worn out.

Q. Of course you can if you will examine them and look for them?

A. Sure.

Q. But you can't tell that a man will examine them and he may and he is presumed to, but there is not much certainty that he will?

A. There is not much certainty that he will get one on with the threads worn.

Q. It has happened.

A. Not that I know of. Threads have been cut after they put them on, but none put on with the threads worn.

Q. I didn't mean it that way, but I mean after they are put on that they have been cut?

A. Yes, oh certainly.

Q. And if you didn't watch for that and notice it and remedy it when it occurred, then you have got a great hazard?

A. If they cut after you have got them on, you will know it real quick.

Q. And it might be too late when you know it?

A. Not if you have got your gates on.

[fol. 123] Q. Not if you watch it and you are not negligent?

A. Yes, if you leave them wide open and don't attempt to cut them off, certainly it will get away.

Mr. Hull: That is all.

Redirect examination.

By Mr. Twyford:

Q. I would like to ask you one question. The state has inspectors and the city also has inspectors to watch those things, don't they?

A. Yes, sir.

Mr. Twyford: That is all.

Recross-examination.

By Mr. Hull:

Q. Has any state inspector ever inspected a well within the city limits, to your knowledge?

A. Not that I know of. I never go with him.

Q. But, you are around him all day long, some of the wells?

A. Not all day long.

Q. You are out in the field?

A. Practically all of the time.

Q. And you have never seen a state inspector inspecting a well within the city limits?

A. No, I never saw him personally.

Mr. Hull: That is all.

Mr. Brown: That is all.

(Witness excused.)

[fol. 124] H. H. WEGNER, called as a witness in behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Twyford:

Q. Mr. Wagner, what is your business here in Oklahoma City?

A. Drilling contractor.

Q. How long have you been in that business?

A. About twelve years.

Q. What have you got to do with this location in block 9 and to the other wells involved in these suits?

A. I am drilling the Reinhart; just have control of the well.

Q. You have the contract to drill that well?

A. Yes, sir.

Q. Have you had other experience in the Oklahoma City field?

A. Yes, sir, I have been drilling for the I. T. I. O. and Slick.

Q. How long have you been drilling for them?

A. I have been drilling for the I. T. I. O. ever since I went to Seminole in 1926 or 1927, I guess.

Q. You are familiar with the surroundings where you are drilling, then?

A. Yes, sir.

Q. Do you know where that well is on that cement property?

A. Yes, sir.

Q. The Western Paving Company?

A. Yes, sir, Slick's well, yes, sir.

Q. Is that Slick's well?

A. Yes, sir.

[fol. 125] Q. How near the paving company's plant is that well?

A. Oh, I really don't know.

Q. Well, is it as near as the one you are drilling?

A. I think it is, yes. I don't know how far the paving company's tract runs that way, but I think it is about the same distance.

Q. Do you consider it any hazard in the drilling of that well where you are drilling it?

A. No, sir.

Q. Would it be any hazard to bring a well in for oil or gas like they bring them in here in the Oklahoma City field?

A. No, sir, I wouldn't think so.

Q. Have you ever had any trouble bringing in a well here?

A. No, sir.

Q. Have you ever done any damage to any property or persons?

A. No, sir.

Q. Are you familiar with this location No. 9?

A. Is that the one in the hog lot?

Q. The hog pen they call it.

A. Yes.

Q. Do you know of that before the location was put there?

A. Yes, sir.

Q. What was it?

A. That was a dump ground full of tin cans and refuse there.

Q. Was it fit for human habitation before that was put there?

A. No, sir.

Q. You heard one of the witnesses describe what he had [fol. 126] to move before he put the location there?

A. Yes, sir.

Q. How long, to your knowledge, has that condition existed there previous to the time that this location for the drilling of this well was put there?

Mr. Hull: We object to that as incompetent, irrelevant and immaterial.

The Court: Sustained.
Mr. Twyford: Exception.

By Mr. Twyford:

Q. The drilling of the well at that location, is that, in your judgment, any hazard to surrounding property or people in that vicinity?
A. No, sir.
Q. Is the drilling of this well, in your judgment, any more dangerous or as much to the health and safety of the surrounding country, property and people, as the condition it was in before the location of the well was put there?

Mr. Hull: We object to that as incompetent, irrelevant and immaterial. It is a matter of comparison and doesn't go to the validity of the bond requirement.
The Court: Sustained.
Mr. Twyford: Note our exception.

By Mr. Twyford:

Q. How many wells, Mr. Wegner, have you completed in this Oklahoma City field?
A. Four of them. Six when I complete these two.

Mr. Twyford: That is all.

[fol. 127] Cross-examination.

By Mr. Hull:

Q. Mr. Wegner, you brought a well in on this location—that is if you brought a well in on this location like the Mary Sudik was brought in, would it be a hazard?
A. Yes, sir.
Q. And like the Sigmon No. 1, would that be a hazard?
A. Yes, sir.
Q. If you had a gasser that caught afire like the Stamper No. 3 and the Kinter No. 5, would that be a hazard?
A. I don't think so. A gas well hadn't ought to hurt anything.
Q. Wouldn't you say a gas well like either of those gas wells were, would set fire to a house within a matter of a couple thousand feet?
A. No, I don't think it would, no, sir.

Q. You don't think it would?
A. No, sir.
Q. What distance do you think it would, Mr. Wegner?
A. Well, that would be kind of hard to tell.
Q. I appreciate that and it is just a matter of your best judgment?
A. Oh, I imagine it would have to get away three or four hundred feet.
Q. And the testimony here shows there are frame buildings within three of four hundred feet of these wells?
A. Something like that, I imagine. I don't know just what the distance is.

Mr. Hull: I believe that is all.

[fol. 128] Redirect examination.

By Mr. Twyford:

Q. If you had this modern equipment on those wells, that couldn't happen, could it?
A. No, sir, we would just close the gate on it and it would be all over with?

Mr. Twyford: That is all.
Mr. Hull: That is all.

(Witness excused.)

M. T. Smith, called as a witness in behalf of the plaintiffs, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Twyford:

Q. Mr. Smith, what is your business?
A. Contractor.
Q. Have you contracted to drill one of these wells?
A. Yes, sir.
Q. Which one?
A. I have the one at Meads and Eckroat.
Q. Is that on block 9?
A. Yes, sir, we are drilling on block 9.

Q. How long have you been in the contracting business?

A. Well, I would say about thirty years.

Q. Have you drilled a great number of oil wells?

A. Yes, sir.

Q. Drilled oil wells before you got in the Oklahoma City field?

A. Yes, sir.

Q. How many have you drilled here in the Oklahoma City field?

[fol. 129] A. I would say these two we are on would make fourteen.

Q. Fourteen?

A. Yes, sir.

Q. Now, you are familiar with bringing in gas wells?

A. Yes, sir.

Q. And with bringing in oil wells?

A. Yes, sir.

Q. Both here in this field and other fields?

A. Yes, sir.

Q. And you are familiar with the surroundings out at this block 9 where you are drilling?

A. Yes, sir.

Q. And you know what is out there?

A. Yes, sir.

Q. Do you consider the drilling of a well there, the bringing in of a well there or the operating of a well there any hazard to surrounding properties?

A. No, sir.

Q. Would it be any hazard to any person that lived out in that country?

A. No, sir.

Q. Would you say that same thing was true as to the well a half mile west of there?

A. Well, yes, there is no danger there.

Q. Then the Eckroat well. Are you drilling a well there?

A. Yes, sir.

Q. That is in a different part of the city?

[fol. 130] A. Yes, sir.

Q. In your opinion is there any hazard to the property surrounding that well?

A. No, sir.

Q. By the drilling and bringing in or operating of that well?

A. No, sir, not with the modern equipment we have.

Q. Is there any danger to the people living in that vicinity?

A. No, sir.

Q. Have you ever had any trouble with either well that you have drilled?

A. No, sir.

Q. None of them have got away from you or out of your control?

A. No, sir.

Q. You have heard this testimony about the modern equipment and the way of bringing these wells in?

A. Yes, sir, I have used it.

Q. Do you use that in the drilling of wells?

A. Yes, sir.

Q. Are you furnished that equipment for the purpose of drilling these particular wells you are drilling now?

A. The companies furnish it, yes, sir.

Q. I say, you will be furnished that?

A. Yes, sir.

Mr. Twyford: That is all.

Cross-examination.

By Mr. Hull:

Q. Mr. Smith, even with all of your modern equipment, the human element is bound to enter into your operations, [fol. 131] is it not?

A. Well, there might be some, yes.

Q. And you can't always know that your employes are going to do what they ought to do and not permit some negligence to enter into their operations, can you?

A. We superintend our own work.

Q. You superintend them, but at the same time, do you remember the other day—I say the other day but not so long ago—when the British-American was drilling in block 13 of the Eckroat Addition pretty close to where you are drilling in 15 and they had a pipe down the street to pump their mud in and the man in charge of that went to sleep and the pipe broke and the mud went in the streets and

they had to clean up the streets with teams, do you remember that?

A. No, that didn't come to my knowledge.

Q. If that did happen it wouldn't save the well, would it, and the human element would enter into it?

A. Yes.

Mr. Hull: That is all.

Mr. Twyford: That is all.

(Witness excused.)

Mr. Twyford: We are through.

Mr. Hull: Now, your Honors, we want to renew our demurrer to this testimony on the ground that the proof, with all reasonable inferences to be drawn from it, is totally insufficient to constitute a cause of action and the most that it would do would be to make a fairly debatable [fol. 132] question as to the reasonableness of this ordinance, which is not sufficient grounds for the court setting aside the legislative will, and we urge also the other grounds of estoppel that I urged in my original demurrer.

The Court: We will adjourn until tomorrow morning at 9 o'clock.

(Whereupon a recess was had to 9 o'clock a. m., October 7, 1930, at which time the hearing was resumed and the following further proceedings were had, to-wit:)

[fol. 133] A. D. Hudspeth, recalled as a witness in behalf of the plaintiffs, testified further as follows:

Redirect examination.

By Mr. Twyford:

Q. Mr. Hudspeth, what will be the probably life of these wells in this Wilcox sand producing here in Oklahoma City?

Mr. Hull: We object to that as incompetent, irrelevant and immaterial and the witness not having qualified himself.

(Argument off the record.)

The Court: Overruled.
Mr. Hull: Exception.

A. From the past experience of the Wilcox sand, it has been producing over a period of seven to fifteen years.

By Mr. Twyford:

Q. How long would you then say the probable life of these wells in the Oklahoma City field would be?
A. Well, where they are drilling in from 100 to 150 feet of sand, it will more than likely be around an average of ten years.

Mr. Twyford: That is all.

Recross-examination.

By Mr. Hull:

Q. Mr. Hudspeth, that is purely a speculative matter, isn't it?
A. No, not from the other fields.
Q. It varies and depends entirely on the number of wells that are drilled into that sand, how close they are put together, how the gas pressure is reduced by the number of holes, and there are dozens of matters that enter into it [fol. 134] that make it purely speculative, aren't there?
A. You can put air on them and produce them for a long time.
Q. When did the discovery well come in? It was the 4th of December, 1928, wasn't it?
A. That wasn't in the Wilcox.
Q. I beg your pardon.
A. I say, that wasn't in the Wilcox.
Q. That is a well in this field, that is what he asked you?
A. That is a lime well.
Q. That well is practically dead today, isn't it?
A. The lime wells, are all short lived wells.
Q. That is practically dead today, isn't it?
A. I think so.

Mr. Hull: That is all.
Mr. Twyford: That is all.

(Witness excused.)

[fols. 135-143] OFFERS IN EVIDENCE

Ordinance No. 3944

An Ordinance Amending Chapter 22, Oklahoma City General Ordinances of 1928; Section 3 of Ordinance No. 3865, Subdivisions 6 and 7 of Section 4 of Ordinance No. 3615, and Section 1 of Chapter 7 Oklahoma City General Ordinances 1928, Relating to the Use of Property Within the City of Oklahoma City and Regulating the Drilling, Mining For or Putting Down Oil and/or Gas Wells, the Erection, Maintenance and Operation of all Structures, Machinery, Tanks or Equipment Used in Connection With Such Well Within the U-7 Use, or Oil and Gas District; and Repealing Section 9 of Ordinance No. 3774 and All of Ordinances Nos. 3883 and 3938; and Repealing All Ordinances or Parts of Ordinances in Conflict Herewith; and Providing a Penalty for the Violation Hereof

* * * * * * *

Section 2. That Section 3 of Ordinance No. 3865 of the City of Oklahoma City, be, and the same is hereby amended to read as follows:

A. It shall be unlawful and an offense for any person, firm or corporation to drill or put down any petroleum or gas well within the corporate limits of the City of Oklahoma City, except within the limits of the U-7 or Oil and Gas District, and unless permit therefor shall have been [fol. 144] first obtained.

* * * * * * *

Section 21. No permit for the drilling or putting down of any petroleum or natural gas well shall be issued to any person, firm or corporation, and no well for which permit has been heretofore issued, shall be drilled into any producing oil or gas horizon, until there shall be filed with the City Clerk of the City of Oklahoma City a good and sufficient bond covering each well for which permit is applied, and executed by some bonding or indemnity company authorized to do business in the State of Oklahoma, running in the

name of Oklahoma City and conditioned that the applicant will pay and discharge any liability imposed by law for damages on account of injury to property, either private or public, or bodily injury, including death, received or suffered by any person or persons, firm or corporation, and resulting from the drilling, operation or maintenance of any well or any structures, equipment, machinery, tanks, pipe lines or appurtenances thereto, and will abide by and comply with all the provisions of this ordinance; said bond shall be approved by the City Council. The maximum total liability, under said bond, for loss or damage, either to person or property shall be $200,000.00. Such bond shall be made for a period of not less than one year, and a new bond shall be furnished at the expiration of any existing one, if the operation of such well covered thereby is continued. If at the time of such renewal all drilling on such well has been completed, the amount of total liability, under such bond, may be reduced to $50,000.00. In case any bond required herein shall lapse or become void for any reason whatsoever, the permit issued under the terms of this ordinance shall immediately become inoperative and void until a new bond shall be provided and filed with the City Clerk or the existing bond reinstated in full force, and such well shall be shut down and all operations and production thereof suspended and discontinued until the filing of such new bond or reinstatement of such existing bond; [fol. 145] said renewal bond shall be approved by the City Council. The provisions of this section shall apply to all wells although permits have been previously issued therefor.

* * * * * * *

[fols. 146-158] Section 28. That any person, firm or corporation, either for himself or as agent, servant, or employe, who shall violate any provision of this ordinance or who shall be engaged in any work or the erection of any structures which shall be in violation of any provision of this ordinance, upon conviction shall be deemed guilty of an offense and fined in any sum not exceeding $19.00 and costs, and each day such violation is continued or any structure is maintained or permitted to exist in violation of this ordinance shall be deemed a separate offense.

Introduced and read in open meeting of the Council of the City of Oklahoma City on the 3rd day of June, 1930.

Passed by the Council of the City of Oklahoma City on the 3rd day of July, 1930.

Approved by the Mayor of the City of Oklahoma City on the 3rd day of July, 1930.

Walter C. Dean, Mayor.

Attest: M. Peshek, Jr., City Clerk.

Approved as to form this 3rd day of Ju-, *day of* ——, 1930.

[fol. 159] In District Court of Oklahoma County

[Title omitted]

Motion for New Trial—Filed Feb. 13, 1932

Comes now the plaintiffs, Walter H. Gant, Knox L. Garvin and A. D. Hudspeth, and move the court to vacate and set aside the judgment granting a permanent injunction rendered by this court on the 13th day of February, 1932, and to grant said plaintiffs a new trial for the following causes which affect materially the substantial rights of said plaintiffs.

One

Irregularity in the proceedings of the court, by which said plaintiffs were prevented from having a fair trial.

Two

Errors of law occurring at the trial and excepted to by said plaintiffs, because the judgment is contrary to law and to the evidence.

Three

Error of the court in sustaining defendants' demurrer [fols. 160 & 161] to plaintiffs' evidence, and in holding that the ordinance in question was valid and not unconstitutional and unreasonable and void.

Four

Error of the court in refusing to grant the plaintiffs the permanent injunction prayed for.

Five

Error of the court in granting to the defendants a permanent injunction.

Six

Error of the court in refusing to admit competent, relevant and material evidence offered by the plaintiffs, to which said plaintiffs excepted.

Twyford & Smith, Brown & Creed, Alan K. Swan,
Attorneys for Plaintiffs.

[File endorsement omitted.]

[fol. 162] In District Court of Oklahoma County, State of Oklahoma

No. 65300

Walter H. Gant, Knox L. Garvin, and A. D. Hudspeth,
Plaintiffs,

vs.

The City of Oklahoma City, Oklahoma, a Municipal Corporation, and J. W. Van Meter, Defendants

Journal Entry of Judgment—Filed Feb. 13, 1932

Now on this 13th day of February, 1932, this action came on for trial on its merits on the issues joined wherein the plaintiffs seek a permanent injunction against the defendants and the defendants seek a permanent injunction against the plaintiffs and the plaintiffs appearing by their attorneys, Twyford & Smith, Brown & Cund and Allen K. Swann, and the defendants appearing by their attorneys,

W. H. Brown, and Harlan T. Deupree and A. L. Hull, both sides announcing ready for trial, thereupon. This being an equity case it was tried without a jury to the court, the parties having introduced all their evidence and stipulations and rested, the court finds the issues against the plaintiffs and denies plaintiffs any injunctive relief. The court finds from the evidence that the plaintiffs have failed to comply with the drilling ordinance of the City of Oklahoma City with reference to completing and operating the well [fol. 163] upon the premises described in the petition, in that the said plaintiffs have failed, refused and neglected to make a $200,000.00 surety bond and secure a drilling permit as required by the ordinance.

The court further finds that the provision of the ordinance requiring such surety bond. as a condition precedent to the issuance of a permit and the development of the property in question for oil and gas purposes, is reasonable, constitutional and valid, and for that reason finds that defendants are entitled to a permanent injunction against the plaintiffs, to which the plaintiffs except.

It is therefore considered, ordered, adjudged and decreed that the plaintiffs be and are hereby permanently enjoined from drilling, completing, equipping and operating an oil and gas well on Block 9, Meade Addition to Oklahoma City, Oklahoma, until such time as plaintiffs shall comply with the ordinance of said city with reference to making and filing surety bond and securing a permit, to which judgment plaintiffs except and exceptions are allowed.

Thereupon and thereafter the motion for new trial of the plaintiffs came on for argument and hearing before the court and the court having heard the arguments for and against the same, finds that the same should be overruled and is hereby overruled and denied, to which plaintiffs except. Thereupon the plaintiffs give notice in open court of their intention to appeal from this judgment to the Supreme Court of the State of Oklahoma, which notice is entered on the trial docket of said court, according to law, [fols. 164-171] by the Clerk of said Court. And thereupon the plaintiffs ask for and are allowed 15 days from this date in which to prepare and serve a case made for such appeal, and the defendants are allowed 3 days to suggest amend-

ments thereto, the same to be settled on 3 days notice, in writing.

Done in open court the date first above written.

Sam Hooker, Judge, District Court.

O. K.

Twyford and Smith, Attorneys for Plaintiffs.

O. K.

Harlan T. Deupree, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 171½] In Supreme Court of Oklahoma

23369

W. H. Gant et al., Plaintiffs in Error,

vs.

City of Oklahoma City et al., Defendants in Error

Judgment—June 21, 1932

And now this cause comes on for final decision and determination by the court upon the record and briefs filed therein.

And the court having considered the same finds that the judgment of the trial court in the above cause should be affirmed.

It is therefore ordered and adjudged by the court that the judgment of the trial court in the above cause be, and the same is hereby affirmed.

Opinion by Andrews, J.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 172] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

No. 23369

WALTER H. GANT, KNOX L. GARVIN, and A. D. HUDSPETH, Plaintiffs in Error,

vs.

THE CITY OF OKLAHOMA CITY, a Municipal Corporation, and J. W. VanMeter, Superintendent of Buildings, Defendants in Error

Syllabus

1. The city of Oklahoma City has the power, under its zoning authority (Chapter 178, Session Laws 1923), to regulate and restrict the real estate within the city limits for the development and production of oil and gas therefrom.

2. Record examined and held: The judgment of the trial court is neither contrary to the law nor the evidence.

Error from the District Court of Oklahoma County, Oklahoma

Hon. Sam Hooker, Judge

Affirmed

Twyford & Smith, Brown & Cund, Allan K. Swan, for Plaintiffs in Error.

M. W. McKenzie, Municipal Counselor; A. L. Hull, Asst. Municipal Counselor, for Defendants in Error.

[fol. 173] OPINION—Filed June 21, 1932

ANDREWS, J.:

This is an appeal from a judgment of the district court of Oklahoma County in favor of the defendants in error, the defendants in the trial court, against the plaintiffs in error, the plaintiffs in the trial court. Hereinafter the parties will be referred to as they appeared in the trial court.

The plaintiffs instituted an action for the purpose of procuring a temporary and a permanent injunction against the defendants. The defendants sought a temporary and a permanent injunction against the plaintiffs. The trial court denied the prayer of the plaintiffs and granted a temporary injunction against them in favor of the defendants. From that judgment an appeal was taken to this court.

This court, in determining that appeal, in the case of Gant, et al. v. City of Oklahoma City, 150 Okla. 86, 6 Pac. (2d) 1065, affirmed the judgment of the trial court and said:

"We cannot see that the city ordinance, in requiring this $200,000 bond, is unreasonable, or unreasonable in requiring a surety known to be solvent and subject to regulation by our laws. The three judges below thought the regulations reasonable. Nothing has been shown indicating that the giving of this bond would in any manner interfere with the lawful rights of the plaintiffs below. It may be their misfortune that they do not get all they want, but the right of life and property, and to enjoy the gains of their own industry, is guaranteed to every person in the city of Oklahoma City by the state Constitution. Considering its size and cost, and considering the probable profits, it is not unreasonable as compared to the property of others endangered. As compared to the hazard to human life, it is a bagatelle."

The trial court denied the prayer of the plaintiffs and granted a permanent injunction against them in favor of the defendants. From that judgment the present appeal was taken to this court.

[fols. 174 & 175] The facts shown by the record in this case are substantially the same as those shown by the record on the former appeal. We think that it is neither necessary nor expedient to further discuss the issues presented by the record in this case or the contentions made by the plaintiffs in their briefs. The city of Oklahoma City has the power, under its zoning authority (Chapter 178, Session Laws 1923), to regulate and restrict the real estate within the city limits for trade, industry, residence, or other purpose. We have heretofore held that the ordinance attacked is a valid ordinance.

We find no error in the judgment of the trial court and it is in all things affirmed.

Riley, Hefner, Cullison, Swindall, McNeill and Kornegay, JJ., concur. Lester, C. J., and Clark, V. C. J., absent.

[fol. 176] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed Nov. 9, 1932

To the Honorable Chief Justice of the Supreme Court of the State of Oklahoma and said Court:

Your petitioners, appellants above named, respectfully show that on the 21st day of June 1932, the Supreme Court of the State of Oklahoma rendered a judgment herein in favor of the defendants in error and against the plaintiffs in error in which said judgment and proceedings had prior thereto in this cause certain errors were committed, to the prejudice of these petitioners, all of which more in detail appear in the assignments of error filed with this petition.

That after the rendition of said judgment and on the 16th day of July, 1932, your petitioners filed a petition for re-hearing; that thereafter on the 1st day of November, 1932, an order was made by this court denying said petition for rehearing. Thereupon an opinion was filed in this cause by this court, affirming the judgment of the District Court of Oklahoma County, Oklahoma, which opinion is a part of the record in this cause.

And your petitioners, the plaintiffs below, respectfully show that there was a judgment in said cause in the District Court of Oklahoma County, State of Oklahoma, in [fol. 177] favor of the defendants in error and against your petitioners restraining and enjoining, by permanent injunction, them from using certain property and real estate and from drilling an oil and/or gas well thereon without first complying with certain void and unconstitutional ordinances of the City of Oklahoma City, which said judgment, upon appeal to the Supreme Court of the State of Oklahoma, was affirmed by said court.

And your petitioners further respectfully show that said Supreme Court of the State of Oklahoma is the highest court of the state of Oklahoma in which a decision in said cause could be had; and your petitioners claim the right

to remove said cause to the Supreme Court of the United States of America by appeal under the statutes of the United States authorizing an appeal from state courts, in as much as in said judgment of the Supreme Court of the state of Oklahoma, and the proceedings in said cause, certain errors were committed to the prejudice of your petitioners, all of which will more in detail appear from the assignments of error which are filed with this petition.

And because your petitioners claimed in said cause that the Supreme Court of the state of Oklahoma erred in holding that the trial court did not commit error in enjoining and restraining by permanent injunction the petitioners from using their property for development for oil and gas and minerals, which injunction was based upon an unreasonable, arbitrary, capricious, unconstitutional and void ordinance of the City of Oklahoma City, which ordinance violates Section 1 Article 14 of the Constitution of the United States as applied to these petitioners and their property in that it abridges priveleges and immunities of citizens of the United States and deprives the petitioners of their property without due process of law and denies to them the equal protection of the laws in that said ordinance and the enforcement thereof by said City, and its officers, required the owner or owners of property, as a condition precedent to the use of their private property and real estate, under the guise of Zoning Ordinances, to make and file with the City a $200,000.00 Surety Bond to be executed only by a paid surety company authorized to do business in the state for the use of said property for lawful purposes in that certain other and additional restrictions upon the use of said private property were contained in [fol. 178] said ordinance, all of which violated the constitutional rights of petitioners, as will more fully appear in the assignments of error which are filed herewith.

And because your petitioners claimed in said cause that the Supreme Court of the State of Oklahoma erred in affirming the judgment of the District Court of Oklahoma County, Oklahoma and in sustaining and holding valid the ordinances of the said City complained of and in sustaining and holding that said ordinances were reasonable and not unreasonable as applied to the property of the petitioners, all of which judgment of the District Court and judgment of the Supreme Court and opinion thereon, is erroneous

and violates the rights of these petitioners under the Constitution of the United States in that the same violated their rights as fixed and guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Wherefore your petitioners claim and say that by a final judgment in a suit in the highest court of the state of Oklahoma in which a decision in said cause could be had, there was drawn in question the validity of a statute and ordinance of the state of Oklahoma and the City of Oklahoma City on the ground of its being repugnant to the Fourteenth Amendment to the Constitution of the United States, and the decision of said court was in favor of its validity. And wherefore, in accordance with the statutes in such cases made and provided, your petitioners pray that an appeal be allowed to the Supreme Court of the United States for the correction of errors, an assignment whereof is filed with this petition, and that a transcript of the record, proceedings, files and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States. And your petitioners pray for the allowance of a citation in due form of law, and for the stay of the effect of the judgment in the Supreme Court of the State of Oklahoma pending the appeal to and determination by the Supreme Court of the United States, and your petitioners will ever pray.

James S. Twyford, Solon W. Smith, Allan K. Swan, R. H. Brown, C. D. Cund, J. H. Everest, Attorneys for Petitioners.

[fol. 179] Let the appeal be allowed. And the mandate is hereby stayed on the present bond of Fifty Thousand ($50,000.00) Dollars filed herein until December 15th, 1932, which is for the purpose of filing the appeal in the Supreme Court of the United States, and upon the filing of same therein mandate is hereby stayed pending final determination therein.

Dated this 9th day of November, 1932.

E. F. Lester, Chief Justice of the Supreme Court of the State of Oklahoma. (Seal Supreme Court, State of Oklahoma.)

Attest:

Gus Pool, Clerk of the Supreme Court of the State of Oklahoma.

[fol. 180] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Nov. 9, 1932

Come now Walter H. Gant, Knox L. Garvin and A. D. Hudspeth, appellants in the above entitled cause, and respectfully show that in the trial of said cause and in the rendition of the judgment in the trial court and in the opinion and judgment of the Supreme Court of the State of Oklahoma in said cause, manifest errors were committed to their prejudice, which are apparent from the record therein; that the errors committed by the trial court and affirmed by the Supreme Court of the State and committed by the Supreme Court of the State in its opinion and judgment in said cause, are more fully and particularly set forth as follows:

I

The Supreme Court of the State of Oklahoma erred in affirming the judgment of the District Court of Oklahoma County, State of Oklahoma.

II

The Supreme Court of the State of Oklahoma erred in not reversing the judgment of the District Court of Oklahoma County, State of Oklahoma.

III

The Supreme Court of the State of Oklahoma erred in holding that the Zoning Ordinance of the City of Oklahoma City, requiring the giving of a $200,000.00 Surety Bond [fols. 181-187] conditioned that the appellants would pay any and all damages accruing to any and all persons arising by operation of law in connection with the drilling of an oil and/or gas well upon the leasehold estate and property of the appellants was reasonable and valid, and erred in not holding that the same was unreasonable and invalid and contrary to the constitutional rights of these appel-

lants as guaranteed to them by the Fourteenth Amendment to the Constitution of the United States in that said ordinance, and the enforcement thereof, and the judgment restraining and permanently injoining and preventing the appellants from using and developing their property is and was the taking of property without due process of law, and denial of the equal protection of the laws and deprives them of their property in the use thereof for lawful purposes.

IV

The Supreme Court of the State of Oklahoma erred in holding that the State of Oklahoma, and its municipal subdivisions, had the right, by a zoning ordinance or statute, to require any bond at all to guarantee the payment of a private obligation that might arise in the future between citizens of the United States, and erred particularly in holding that if a bond could be required that the only kind of a bond that would be accepted and sufficient would be one signed by a third party to-wit; a Surety Company authorized to do business in the state, over whom the owner of said property has or had no control, and in refusing to accept a bond signed by good and sufficient sureties, if any bond at all could be required, all of which holdings and all of which provisions making said requirements contained in said ordinance, were violative of the constitutional rights of appellants as guaranteed to them by the Fourteenth Amendment to the Constitution of the United States, which constitutional question was raised from the inception of the case to the present time.

For which errors the said Walter H. Gant, Knox L. Garvin and A. D. Hudspeth pray that the said judgment of the Supreme Court of the State of Oklahoma and of the District Court of Oklahoma County, State of Oklahoma be reversed and judgment rendered in favor of the appellants; and for such other and further relief as to the court may seem just and proper, and for all costs.

James S. Twyford, Solon W. Smith, Allan K. Swan, R. B. Brown, C. D. Cund, J. H. Everest, Attorneys for Appellants.

[fol. 188] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANTS RELY AND PARTS OF RECORD TO BE PRINTED IN SUPPORT THEREOF—Filed Dec. 13, 1932

Come now appellants and respectfully designate the following points upon which they rely and the parts of the record to be printed in support thereof, to-wit:

Points Upon Which They Rely

Appellants claim and aver that that part of the Zoning Ordinance of the City of Oklahoma City, known as Ordinance #3944, is unreasonable, discriminatory, unconstitutional and void as applied to the property of the appellants, and the facts as shown in the record. The same being violative of the Fourteenth Amendment to the Constitution of the United States, and is and was, in its operation, the taking of property without due process of law, a denial of the equal protection of the laws, and the enforcement thereof as against the property of the appellants and deprives them of their property and the use thereof for lawful purposes contrary to the Constitution of the United States, and that the City had no statutory authority to enact and enforce the same, which section of said ordinance reads as follows, to-wit:

"No permit for the drilling or putting down of any petroleum or natural gas well shall be issued to any person, firm or corporation, and no well for which permit has been heretofore issued, shall be drilled into any producing oil or gas horizon, until there shall be filed with the City Clerk of the City of Oklahoma City a good and sufficient bond covering [fol. 189] each well for which permit is applied, and executed by some bonding or indemnity company authorized to do business in the State of Oklahoma, running in the name of Oklahoma City and conditioned that the applicant will pay and discharge any liability imposed by law for damages on account of injury to property, either private or public, or bodily injury, including death, received or suffered by any person or persons, firm or corporation, and resulting from the drilling, operation or maintenance of any well or any structures, equipment, machinery, tanks, pipelines or appurtenances thereto, and will abide by and comply with all the provisions of this ordinance; said bond shall be approved

by the city Council. The maximum total liability, under said bond, for loss or damage either to person or property shall be $200,000.00. Such bond shall be made for a period of not less than one year, and a new bond shall be furnished at the expiration of any existing one, if the operation of such well covered thereby is continued. If at the time of such renewal all drilling on such well has been completed, the amount of total liability, under such bond, may be reduced to $50,000.00. In case any bond required herein shall lapse or become void for any reason whatsoever, the permit issued under the terms of this ordinance shall immediately become inoperative and void until a new bond shall be provided and filed with the City Clerk or the existing bond reinstated in full force, and such well shall be shut down and all operations and production thereof suspended and discontinued until the filing of such new bond or reinstatement of such existing bond; said renewal bond shall be approved by the City Council. The provisions of this section shall apply to all wells although permits have been previously issued therefor."

Parts of Record to be Printed at Request of Appellants

Come now the appellants and request the following parts of the record in support of the points upon which they rely as follows, to-wit:

1. Petition (omitting caption) (R. pages 7-11).
2. Answer and Cross-petition (omitting caption and verification) (R. pages 15-19).
3. Evidence of witness, James Lemen (omitting any remarks of counsel and objections and rulings if desired by clerk.) (Omit exhibits). (R. pages 28-62.)
4. Evidence of Thomas C. Vaughn (R. pages 63 to 71). With same omissions as above. (Omit exhibits.)
5. Evidence of Charles K. Scruggs (R. pages 71 to 77). (Omit exhibits.)

[fols. 190 & 191] 6. Evidence of A. D. Hudspeth (R. pages 78 to 86). Same omissions as above. (Omit exhibits.) Recalled: (R. pages 133 to 134.)

7. Evidence of Knox L. Garvin (R. pages 87 to 96). Omissions as above. (Omit exhibits.)
8. Evidence of Walter H. Gant (R. pages 107 to 115). (Omissions as above.) (Omit exhibits.)
9. Evidence of Otto Bradford (R. pages 116 to 123). Omissions as above. (Omit exhibits.)

10. Evidence of H. H. Wegener (R. pages 124 to 128). Omissions as above. (Omit exhibits.)

11. Evidence of M. P. Smith (R. pages 128 to 133). Omissions as above. (Omit exhibits.)

Section 21 of Ordinance No. 3944 appearing at pages 144 to 145 of the record, Section 2-A Record Page 135 and Section 28 of said Ordinance appearing at page 146 of the record.

Order of Injunction of the trial court (omitting caption) (R. pages 162 to 164).

Motion for New trial (omitting caption) (R. pages 159 to 160).

Journal Entry of Judgment affirming case (R. 171½).

Opinion of Supreme Court affirming judgment of trial court (omitting caption) (R. pages 172 to 174).

Petition for Appeal (omitting caption) (R. pages 176 to 178).

Order Allowing Appeal (R. page 179).

Assignment of Errors (omitting caption) (R. pages 180 to 181).

Witness our hands this 26th day of November, 1932.

James S. Twyford, Solon W. Smith, Allan K. Swan, R. B. Brown, C. D. Cund, J. H. Everest, Attorneys for Appellants.

We the undersigned attorneys for the defendant, The City of Oklahoma City, and J. W. VanMeter, hereby accept service of the above and foregoing statement of points and parts of record to be printed and designated by the appellants this 26th day of November, 1932.

W. H. Brown, Municipal Counselor, and Harlan T. Denfree, Asst. Municipal Counselor, Attorneys for Appellees, City of Oklahoma City and J. W. Van Meter.

[fol. 192] [File endorsement omitted.]

Endorsed on cover: File No. 37,244. Oklahoma Supreme Court. Term No. 547. Walter H. Gant, Knox L. Garvin, and A. D. Hudspeth, appellants, vs. The City of Oklahoma City and J. W. VanMeter, Superintendent of Buildings. Filed December 10, 1932. File No. 37,244.